TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 110.

ELEANOR ERICA STRONG AND RICHARD P. STRONG, HER HUSBAND, PLAINTIFFS IN ERROR,

vs.

FRANCISCO GUTIERREZ RÉPIDE.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED JUNE 20, 1907.

(20,766.)

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a UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. No. 2101. No. 2245.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ REPIDE.

1 Be it remembered that on the first day of July, in the year of Our Lord One Thousand Nine Hundred and Four, there was filed in the Supreme Court of the Philippine Islands, in the above-entitled cause, a Bill of Exceptions which had theretofore been allowed in a certain cause theretofore tried and determined in the Court of First Instance of the City of Manila, wherein Eleanor Erica Strong and Richard P. Strong, her husband, were plaintiffs and Francisco Gutiérrez Répide was defendant, which Bill of Exceptions reads, in words and figures, as follows, to wit:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 2365.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ REPIDE.

Bill of Exceptions.

Be it remembered that in the above-entitled cause the following matters were done and proceedings were had, in the Court of First Instance of the City of Manila, that is to say:

2 On the 12th day of January, 1904, the said plaintiffs filed in said Court their complaint in the following terms:

"UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG, Formerly ELEANOR ERICA ANDREWS, and RICHARD P. STRONG, Her Husband, Plaintiffs,

vs.

FRANCISCO GUTIERREZ RÉPIDE.

Complaint.

Plaintiffs complain to the Court, and for their cause of action show, that:

I.

The plaintiff, Erica Eleanor Strong, is a married woman, and the plaintiff, Richard P. Strong, is her husband, and both are residents of the City of Manila, Philippine Islands.

II.

The defendant is a resident of the City of Manila, Philippine Islands.

III.

On and before the 10th. day of October, 1903, the plaintiff Eleanor Erica Strong was the owner of eight hundred (800) shares of the capital stock of the Philippine Sugar Estates Development Company, Limited, and the defendant was the general manager of the said Company; that the par value of the said shares is one hundred dollars ($100.00), Mexican currency, per share, and that on and before the said 10th. day of October, the actual value of the same was wholly unknown to the plaintiffs.

3 IV.

On the 10th. day of October, 1903, one F. Stuart Jones had in his possession the said eight hundred (800) shares of stock and, believing in good faith that he had the right and authority so to do, transferred said shares to the defendant in consideration of the sum of sixteen thousand dollars ($16,000.00), Mexican currency or twenty dollars ($20.00) Mexican currency per share, wholly without the knowledge, consent or authority of the plaintiffs, and that said plaintiffs have not since ratified or confirmed the said transaction, but have disaffirmed said transfer; that said consideration was grossly inadequate; that defendant on and before October 10, 1903, knew that said shares were the property of the plaintiff, Eleanor Erica Strong.

V.

At the time of the said transfer, to-wit:—on October 10, 1903, the said shares were reasonably worth One Hundred and forty dollars

($140.00) Mexican currency per share, a total of One Hundred and twelve thousand dollars ($112,000.00) Mexican currency, which fact was well known to the defendant but wholly unknown to the plaintiffs.

VI.

The defendant, deliberately, wilfully, knowingly, and with the intent to deceive and defraud the plaintiffs, concealed from the plaintiffs the value of said shares, and deliberately, wilfully, and knowingly deprived the plaintiffs of means of ascertaining the value of said shares, for the purpose of securing possession of the same at a grossly inadequate price; and did thereby perpetrate upon the plaintiffs a gross fraud.

VII.

Plaintiffs are informed and believe, and therefore charge,
4 that by reason of the premises the defendant did not acquire a title to the said shares, and that the plaintiffs are entitled to recover the possession of the same.

VIII.

Plaintiffs have demanded of the defendant the return of said shares, and tendered the defendant the amount, to-wit:—sixteen thousand dollars ($16,000.00) Mexican currency, which the defendant paid the said F. Stuart Jones for the same, but the defendant has refused to return the same, and still refuses.

IX.

Said shares are transferable by delivery, and, unless this Honorable Court interferes, plaintiffs believe, and, therefore, allege that the said shares will be disposed of by the defendant, so that the Court will be powerless to grant the relief hereinafter prayed for, and to which the plaintiffs are entitled.

Wherefore, plaintiffs pray:

First. That an injunction issue restraining the defendant from disposing of said shares until the further order of this Court.

Second. That a receiver be appointed to take charge of said shares pending the final decision of this cause.

Third. That a judgment be entered for the plaintiffs, declaring the said shares the property of the said plaintiff, Eleanor Erica Strong, and ordering the same to be returned to the said plaintiff, and,

Fourth. That such other further and general relief may be granted the plaintiffs as justice and equity require, and to the Court may seem meet.

(PILLSBURY & SUTRO.)
Attorneys for the Plaintiffs.

5 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Eleanor Erica Strong and Richard P. Strong, being duly sworn, depose and say:

That they are the plaintiffs named in the foregoing complaint; that they have read the same and that the same is true as to the matters therein stated, except as to those matters stated on information and belief, and that as to those matters they believe it to be true.

(ELEANOR ERICA STRONG.)
(RICHARD P. STRONG.)

Sworn to before me and subscribed in my presence this 12th day of January, 1904.

(W. H. LAWRENCE,)
Notary Public, Whose Term Expires on January 1st, 1905."

That on the 14th day of April, 1904, the Court made the following order amending the complaint of plaintiffs in this suit:

"It appearing to the Court that due notice of said motion has been given to the attorneys for the defendant, and after hearing the attorneys for plaintiffs and defendant, the Court, being of the opinion that the amendment asked for should be allowed, does hereby adjudge, order and decree that Section 7 of the complaint herein be amended by changing the period at the end thereof to a semicolon and adding the following: "or that if defendant did acquire title to the said shares by the transaction aforesaid, the plaintiffs have the right to rescind and cancel the agreement by which the aforesaid transfer was made, and require the defendant to return the said shares to the plaintiffs."

Manila, P. I., April 14, 1904.

(BEEKMAN WINTHROP, *Judge.*")

6 On the 14th day of April, 1904, the defendant made and filed the following answer to the said amended complaint:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG, Formerly ELEANOR ERICA ANDREWS, and RICHARD P. STRONG, Her Husband,

vs.

FRANCISCO GUTIERREZ RÉPIDE.

Now comes the above named defendant, and for his answer to the amended complaint herein, says:

1. He admits the allegations contained in the first and second paragraphs of the said complaint;

2. He denies each and every allegation contained in the third paragraph of said complaint, except that the par value of the shares of stock referred to therein is One Hundred Dollars, Mexican currency,

per share, and that the defendant was at the time stated the administrador of the association mentioned;

3. He denies each and every allegation contained in the fourth paragraph, except that the said Jones therein referred to had in his possession Eight Hundred shares of stock of the said association, and believed that he had the right and authority to transfer the said shares;

4. He denies each and every allegation contained in paragraphs 5, 6, 7, 8 and 9 of the said complaint, except that the shares referred to are transferable by delivery, and that he has refused to return the same to the plaintiffs.

5. And further answering the said complaint this defendant says that on or about the tenth day of October, 1903, the said
7 plaintiff Eleanor Erica Strong, and her duly authorized attorney-in-fact,—the F. Stuart Jones referred to in the complaint herein, for her, and in her name, place and stead, transferred, sold and delivered the said Eight Hundred shares of stock, payable to bearer and transferable by delivery, with the intervention and by means of their regularly appointed and duly authorized commercial brokers in the City of Manila, to one Albert Kaufman, who afterwards sold and conveyed the same to this defendant, who, prior to the commencement of this suit, and prior to any demand made upon him by the plaintiffs herein, had sold, transferred and delivered the said shares of stock to Luis Gutierrez, a citizen and resident of Spain;

Wherefore, this defendant prays that he may go hence without day and recover his costs and damages herein sustained.

Manila, April 12, 1904.

HARTIGAN, MARPLE, SOLIGNAC & GUTIERREZ.

Recibí 14 de Abril, de 1904.
(J. McMICKING.)

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

Part IV.

Before Judge Winthrop.

No. 2365.

ELEANOR ERICA STRONG, Formerly ELEANOR ERICA ANDREWS, and RICHARD P. STRONG, Her Husband,

vs.

FRANCISCO GUTIERREZ RÉPIDE.

Counsel for the Plaintiffs: Pillsbury & Sutro;
8 Counsel for the Defendant: Hartigan, Marple, Gutierrez & Solignac, and Mr. Rohde.

APRIL 18TH, 1904.

Mr. Sutro read the complaint, together with some amendments which were accepted by Counsel for the defendant. Mr. Marple then

asked that an order be made permitting the Defendant to enter an amended answer, and no objection being made, it was allowed by the Court.

Mr. MARPLE: I think it would be probably better to follow the general rule as to the exclusion of witnesses on both sides.

Mr. KINNEY: I don't know of any rule of law to be followed to that effect.

Mr. SUTRO: It is necessary only when the character of the witnesses *are* such as to entitle them to little credibility.

The COURT: I will grant the request of Mr. Marple, although there is nothing in the law requiring it.

RICHARD P. STRONG, called in his own behalf, being duly sworn, testified as follows:

Mr. KINNEY: State your full name?

A. Richard P. Strong.

Q. Where do you reside?

A. No. 253 Calle Nozaleda, Manila.

Q. State your age and occupation?

A. 32 years, I am Director of the Government Biological Laboratory.

Q. Are you one of the plaintiffs in this suit?

A. Yes, sir.

Q. Are you the husband of Eleanor Erica Strong, the other plaintiff in this suit?

A. I am.

9 Q. This is a suit to recover of Francisco Gutierrez Répide eight hundred shares of stock of the Philippine Sugar Estates Development Company, which it is alleged belong to the plaintiff, and which were bought by the defendant under circumstances which entitle the plaintiff to recover. Please state to the Court what you know about the transaction which led up to the purchase by Señor Gutierrez of that stock?

A. What I know now?

Q. Beginning with your first knowledge of it, what you know of your own knowledge?

A. I don't quite understand.

Q. When did you first know of any attempt on the part of anyone to purchase Mrs. Strong's stock?

Mr. MARPLE: I object, as leading and calling for a conclusion of the witness, and as immaterial, irrelevant and incompetent, and not tending to establish any issue in this case and in no way being connected with the defendant.

Objection overruled, and exception taken.

A. I believe several efforts were made to purchase the stock. I remember two or three years ago an offer being made, which was declined at that time. We refused to sell the stock at that time for less than half its face value. The next recent offer was: I was approached by Mr. Sloan. Mr. Sloan wrote a letter asking if Mrs. Strong cared to sell her Friar Lands stock. My recollection is that I replied to

that letter, saying that as there was no offer of price, we would like to know about that; and also to consult with Mr. Jones, in whose possession the stock was.

10 Q. Do you know, when that communication was received by you when you made your reply?

A. I could not fix the date, exactly.

Q. Have you the letter which you received from Mr. Sloan?

A. I have not.

Q. Do you know where it is?

A. It has been destroyed.

Q. Did you keep any copy of the letter you wrote Mr. Sloan in reply?

A. I did not.

Q. Fix as near as you can the date of that transaction, Dr. Strong.

A. Sometime in September or October, I could not fix the date any nearer. It made very little impression on me at the time. I heard nothing further from Mr. Sloan and considered the matter dropped.

Q. Did you communicate the fact that you had received that letter from Mr. Sloan to Mrs. Strong?

A. I mentioned the fact that Mr. Sloan had asked whether she wished to sell her shares.

Q. Did you tell her that you had referred him to Mr. Jones?

A. No, sir, I think not.

Q. After the receipt of the letter from Mr. Sloan, and your reply, did you talk to Mr. Jones about the matter?

A. I merely mentioned to Mr. Jones that I had received a letter from Mr. Sloan asking about the purchase of the stock, and he said that Mr. Sloan would probably talk the matter over with him.

Q. At the time you mentioned this matter, do you know how long after the receipt of this letter from Mr. Sloan it was, that you had your conversation with Mr. Jones?

11 A. I imagine within a week.

Q. When did you next talk with Mr. Jones about this stock matter, if you remember?

A. Mr. Jones came to the house one evening, about half past six, and was chatting with my wife and myself, and I had a paper before me.

Q. What paper?

A. The Manila Times, and I said "I see that the Government are going to purchase the Friar lands shares." "Mr. Jones said: "what of it?" I said: "My wife should realize a good deal on those shares." He hesitated a moment or two, and then said: "your wife has not any shares." I said: "What do you mean?" He said: "I have sold them. I did not intend to tell you anything about it." We were naturally somewhat surprised, but the subject was dropped at the time.

Q. You said that you had in your hands, at the time of Mr. Jones' visit, the Manila Times, in which was an account of the sale of the land to the Government: was that the account of the final sale to the Government, can you fix the date?

A. No, it was not the final sale.

Mr. MARPLE: I object to the question about the final sale to the Government, as stating a fact not in evidence, there having been no sale to the Government as yet, the title not having passed to these lands.

Mr. KINNEY: I will withdraw the question.

Q. You speak about an account being in the newspaper about the sale of the Friar lands: do you remember what was the nature of that account, and when it appeared?

A. The nature of the account was such as to make me feel
12 that the Government were going to buy these shares, and take over the Friar lands.

Q. Tell the time as near as you can fix it?

A. I cannot fix the date exactly. I have tried to but I cannot remember the date: it might have been the latter part of November or early in December.

Q. Who was present at that time?

A. Mr. Jones, of course, and my wife and myself.

Q. What action, if any, did you take after being told by Mr. Jones that he had sold the shares?

A. As soon as Mr. Jones had gone, I talked the matter over with my wife, and we both agreed that it was a very unfortunate happening; and then, in a day or two, I wrote Mr. Jones asking for some information about the matter.

Mr. MARPLE: I object to the contents of the letter, as not the best evidence.

Q. Did you keep a copy of the letter which you wrote to Mr. Jones?

A. I have a copy of one letter, I think, in my desk.

Q. Of that letter?

A. Not of the first letter.

Q. Do you know where that letter is: have you it?

A. I have not, perhaps Mr. Jones has, I have no means of knowing whether Mr. Jones kept the letter, or not.

Q. State what your recollection is as to the contents of that letter?

Mr. MARPLE: Objected to as incompetent, it has already been testified by the witness that probably the letter was in existence, and in the possession of a witness who is in this room.

Q. Tell what action you took, without telling the contents
13 of that letter, or any letter which you may have written?

A. I took action to recover the stock, first through Mr. Jones, requested Mr. Jones to find out who had purchased the stock, and to consult a lawyer about the case.

Q. How long, after you heard of this sale by Mr. Jones, was it that you took the steps to which you refer?

A. The first steps were taken two or three days after the first conversation.

Q. By that conversation you mean the one in which Mr. Jones first told you that the shares were sold?

A. I saw that Mr. Jones was very sensitive about the matter, and being an old friend, it was a long time before we took any steps about the matter.

Q. How long have you known Mr. Jones?

A. About five years.

Q. Is he the F. Stuart Jones who is spoken of in the complaint?

A. He is.

Q. How well have you known Mr. Jones?

A. I have known him very well.

Q. How did it happen that Mr. Jones was in possession of the stock which you have testified to as belonging to Mrs. Strong?

A. Mr. Wood, I believe, originally offered to take charge of my wife's affairs.

Q. Who is Mr. Wood?

A. Mr. Wood was one of the firm of Smith Bell & Company.

Q. Who succeeded Mr. Wood, when he left?

A. Mr. Jones, I think. I think Mr. Wood transferred his right to Mr. Jones: what rights he had in regard to looking generally after my wife's affairs.

Q. Was Mr. Jones then looking generally after Mrs. Strong's affairs?

A. Yes, sir.

14 Q. Do you know whether or not Mrs. Strong ever executed any written authority to Mr. Jones to manage her affairs?

Mr. ROHDE: I object, it makes very little difference whether Mr. Strong knows of this power or not, it has no weight.

Objection overruled, and exception taken.

A. My recollection is that Mr. Jones had some paper giving him authority to collect money from shares, and from houses, lands, etc. I don't know the exact contents of the paper.

Mr. ROHDE: I move to strike that out, because it has not been shown that the original paper is not in existence, and if it is, and it is in the power of the plaintiff to obtain that original, they should produce it.

Mr. KINNEY: I believe that a portion may be stricken out, but that part which states there was some writing ought to stand.

The COURT: That part other than that there was some paper may be stricken out.

Q. At the time you learned through Mr. Jones of this sale having been made of Mrs. Strong's stock, did you know to what extent Mr. Jones was authorized to represent your wife?

Mr. ROHDE: Objected to as immaterial.

Objection overruled, and exception taken.

A. No, sir.

Cross-examination:

Mr. ROHDE: How long have you lived in Manila, Dr. Strong?

A. About five years, not continuously for five years, I have been away at times.

Q. Have you lived continuously in Manila, during that time?
A. The time I have been in the Philippine Islands, yes sir.
15 Q. How long a period have you lived in the City of Manila, continuously, up to the present time?
A. Two years without a break, about two years continuously.
Q. I mean since the last time you returned to these Islands.
A. I returned in July, 1903, the last time, probably that will answer your question.
Q. Since when did you know that your wife had stock in the Philippine Sugar Estates Development Company?
A. About two and a half years, I think, I cannot fix the date exactly.
Q. What paper was that you had before you, that you testified to, at the time Mr. Jones was in your house?
A. I have already stated that it was the Manila Times.
Q. How long did you know that that trade concerning the Friar lands was in progress, before that time?
A. Between the Government and the Friar lands, many months.
Q. Did you discuss it frequently?
A. I discussed it in London, with Mr. Wood.
Q. Did you discuss it here in the Islands?
A. I did not, not that I have any recollection of, except that I of course noted the fact in the papers from time to time.
Q. Did you know the parties that carried on the negotiations?
A. What negotiations?
Q. The negotiations for the sale of the Friar lands.
A. I know Governor Taft naturally.
Q. Do you know Governor Wright?
A. I do.
Q. Do you know General Smith?
A. I do.
16 Q. Do you know Judge Ide?
A. I do.
Q. Do you know them all personally?
A. Yes, sir.
Q. Do you know Mr. Worcester?
A. Yes, sir.
Q. And the Filipino members of the Commission?
A. Yes, sir.
Q. How long have you known these gentlemen personally?
A. Since first coming to the Islands, that is the American Commissioners, with the exception of General Smith: General Smith since he became Commissioner I have known.
Q. Did you meet these gentlemen frequently?
A. Yes, sir.
Q. During last year?
A. During 1903, yes, since July, 1903, since my return.
Q. And you meet them frequently?
A. Yes, sir.
Q. What position do you hold in the Civil Government?
A. I have already stated, Director of the Biological Laboratory.

Q. Are you a subscriber to the Manila Times?
A. Yes, I am.
Q. How did the letter that Mr. Sloan wrote to you come to be destroyed?
A. It was a letter naturally of little importance, really a chit, written on a piece of scratch block, if I remember; I never keep letters of that kind.
Q. Do you ordinarily keep your letters and private papers?
A. Professional letters and official letters, I keep ordinarily.
17 Q. But letters relating to business?
A. I have so few business letters, and generally of little importance, that I do not keep them: I have no file for business letters.
The WITNESS: May I make a statement?
The COURT: Proceed, Dr. Strong.
A. I should like to make my position clear regarding what I read in the Manila Times. What I read led me to believe that the Government would buy these shares, that was the impression I gained from the paper at that time, and that was why I spoke to Mr. Jones about it.

Cross-examination.

Mr. MARPLE: When you speak of shares, you mean the Government buying the Friar lands?
A. Yes, sir.
Q. When did you first know, that Señor Gutierrez had purchased these shares belonging to your wife?
A. After I had placed the case in the hands of a law firm.
Q. In whos- hands?
A. In Mr. Sutro's hands. I had made efforts, however, persistent efforts, to find out before that time who had purchased these shares.
Q. Can you fix the time that you first found out that Mr. Gutierrez had purchased the shares?
A. I think early in January; Mr. Sutro would know it exactly. There seemed to be some difficulty about finding out who had purchased the shares.

ELEANOR ERICA STRONG, witness in her own behalf, being duly sworn, testified as follows:

18 Mr. KINNEY: State your full name, Mrs. Strong, please.
A. Eleanor Erica Strong.
Q. What is your place of residence?
A. No. 253 Calle Nozaleda, Manila.
Q. Are you one of the plaintiffs in this suit?
A. Yes, sir.
Q. Is the witness, who has just testified, your husband?
A. Yes, sir.
Q. Were you the owner, Mrs. Strong, in September and the early part of October, 1903, of eight hundred shares of the Philippine Sugar Estates Development Company?
A. Yes, sir.

Q. In whose possession were those shares?
A. Mr. Jones had them.
Q. What Mr. Jones?
A. Mr. F. Stuart Jones of Smith Bell & Company.
Q. Why were these shares in Mr. Jones' possession, Mrs. Strong?
A. Mr. Jones was looking after my affairs for me.
Q. How long has Mr. Jones been looking after your affairs?
A. About three years.
Q. Ever since his return?
A. Yes, sir.
Q. Did Mr. Jones receive any compensation for looking after your affairs, Mrs. Strong?
A. No, sir.

Mr. ROHDE: Objected to as immaterial, and I move to strike out the answer.
The COURT: Objection overruled, and the motion to strike out is denied.
Mr. ROHDE: Exception.

Q. How long have you known Mr. F. Stuart Jones?
19 A. Thirteen years.
Q. Have you known him well, Mrs. Strong?
A. Yes, sir, very well.
Q. I believe you stated that he had been looking after your affairs for three years?
A. Yes, sir.
Q. What sort of authority did you give Mr. Jones, if any, to look after your affairs?

Mr. MARPLE: I object as incompetent, calling for the contents of an authority that is presumably in writing, and as not the best evidence.
Mr. ROHDE: Objected to for the further reason, that the question should be whether the authority was written or oral first.
Objection overruled, and exception taken.

A. In regard to these shares I gave him no authority. I told him that Mr. Wood had advised me not to sell unless I got the face value. About three years ago he asked me to sign a paper, written in Spanish, I don't know what it said, and I signed it; but I don't know what authority it gave.
Q. Who asked you to sign this paper you refer to?
A. Mr. Jones.

Mr. ROHDE: I move to strike out the answer, unless the witness first states whether it is in writing or not.
Objection overruled, and exception taken.

Q. Was that paper to which you refer executed before a notary or not?
A. I don't remember, I don't understand legal matters.
Q. Do you remember where it was executed?
A. No, I don't remember.

Q. Do you remember whether Mr. Jones brought it to you
20 to sign or whether you went with him or someone else to some place to sign it, or have you any recollection about the details?

A. I have no recollection about the details; he only asked me to sign, and I signed.

Q. Do you remember whether or not you ever signed more than one paper, giving Mr. Jones authority to represent you in your business affairs?

A. No, I do not remember.

Q. Do you mean that you don't remember, or that you did not sign more than one?

A. I think I signed one.

Q. Your recollection is that you only signed one?

A. Yes, sir.

Q. When did you first learn that your shares had been sold?

A. The night Mr. Jones was at the house, talking to my husband about it.

Q. Can you fix the date, the month or the day of the month?

A. No, I do not know the month. It was the night Mr. Jones and my husband had a conversation, after reading the Manila Times.

Q. That was the time your husband spoke of, that Mr. Jones mentioned at your house that he had sold the shares?

A. Yes, sir.

Q. When did you have any conversation, if at all, with Mr. Jones about these shares prior to this night when he told you that he sold them?

A. One night on the Luneta, and I told him. Mr. Wood had told me I was not to part with the shares until I got their face value.

Q. Do you remember when that conversation took place?

A. I remember I distinctly told Mr. Jones not to part with
21 them until I got the face value.

Mr. MARPLE: I move to strike out what this witness told Mr. Jones, as immaterial and not stated in the presence of the defendant, and on the ground that it is the veriest kind of hearsay, and any private instructions between her and her attorney-in-fact, Jones, is not capable of binding this defendant.

Motion denied, and exception taken.

Q. What action, if any, did you take after you were told by Mr. Jones that he had sold this stock?

A. I said to my husband that something must be done. I advised my husband at once to take up the case, which he immediately did, and he went to see Mr. Sutro.

Q. Now the conversation which you say you had with Mr. Jones on the Luneta, can you fix approximately the time of the year, the month when that conversation took place?

A. No, I do not remember.

Q. I think it is in evidence that you and your husband returned to the Philippine Islands in July, 1903?

A. Yes, sir.

Q. Can you fix the time with reference to that; was it before you

left or after you returned: was it after you returned from Europe or before you went?

A. After.

Q. Then it was since July, 1903, that you had that conversation with Mr. Jones?

A. Yes, sir.

Q. Can you fix the date any closer that that; what time in July did you return?

A. About the 14th of July.

22 Q. Can you tell me how long after you returned that this conversation took place with Mr. Jones on the Luneta?

A. No; I don't remember.

Q. Was it before the time that you heard that Mr. Jones had sold the stock?

A. Yes, sir.

Q. Was it as late as September: please fix the date as near as you can, if you can do so.

A. I don't remember.

Q. When did you first learn that Mr. Gutierrez was the purchaser of that stock?

A. My husband told me.

Q. When was that?

A. I don't know the date.

Q. Was it after the conversation had with Mr. Jones, in which he stated that he had sold the stock?

A. Yes, sir.

Q. How long after that would you say it was: days, weeks or months?

A. Weeks.

Q. Do you know what relation Mr. Gutierrez occupies with the Philippine Sugar Estates Development Company?

A. Now?

Q. Yes.

A. No.

Q. Do you know whether or not he has any connection with the Philippine Sugar Estates Development Company?

A. Yes, sir.

Q. Did you know in October, or any time prior to October, 1903, that Mr. Gutierrez occupied any official position with the Philippine Sugar Estates Development Company?

23 Mr. MARPLE: Objected to as immaterial and irrelevant. (Objection withdrawn.)

A. Yes, I knew he was in that Company.

Cross-examination.

Mr. MARPLE: How long have you lived in the Philippine Islands?

A. Fourteen years.

Q. You have a very fair knowledge of Spanish, have you not?

A. Not very; not in legal documents at all.

Q. But you talk Spanish generally, do you not, Mrs. Strong?

A. I can speak Spanish, but not very well.

Q. And as a matter of fact has it not been your practice for years, in going into stores in Manila, that you made all your purchases through the medium of the Spanish language?

A. Yes, in the olden days.

Q. Then years ago, you had a practical conversational knowledge of the Spanish language?

A. Yes, sir.

Q. Then how is it that you do not understand the Spanish of a legal document: how is it you are certain of that?

A. I never have understood legal documents at all: I never have understood business matters.

Q. Was it Mr. Jones that asked you to sign this document relating to these shares of stock, some three years ago, or Mr. Wood?

A. Mr. Wood.

Q. Did Mr. Jones and your family frequently meet each other?

A. Yes, sir.

Q. And did you live close together, or were your houses far apart, during the months of September and October last year?

24 A. No, sir.

Q. How close were the houses?

A. Mr. Jones lived in Ermita and we live in Paco.

Q. And when you returned to the Philippines last, it was in July, 1903, and you had been to London during that absence.

A. Yes, sir.

Q. And had a talk with Mr. Wood there, about these shares of stock?

A. Yes, sir.

Q. And Mr. Wood was, while here, the manager for the commercial house of Smith Bell & Company?

A. Yes, sir.

Q. And that is the position which Mr. Jones also holds?

A. Yes, sir.

Q. Now then, when you returned to the Philippine Islands you knew, of course, that the Government was talking about buying the Friar lands?

A. Yes, sir.

Q. And among those were the lands of the Philippine Sugar Estates Development Company?

A. Yes, sir.

Q. And you, having that in mind, told Mr. Jones, as I understand, that he should not sell these shares for less than par?

A. That he was not to part with them unless he got their face value.

Q. At that time then you regarded Mr. Jones as having full power to part with them, when you told him that, did you not?

A. No, I never gave him any authority.

25 Q. Why did you think it necessary, to tell Mr. Jones at that time, that he was never to part with those shares of stock at less than their face value?

A. That had always been the advice: that they were a good thing.

Q. Yes, but if Mr. Jones had no authority to dispose of these

shares of stock, why did you think it necessary to tell him at this time that he must not sell them at less than par?

A. It was a general conversation. I told him that because I thought it was a very good thing, and that I had been advised never to part with them.

Q. When did you get the money from Mr. Jones for these shares of stock?

A. I did not get any money.

Q. Did Dr. Strong get the money?

A. No, sir.

Q. Was the money never paid by Mr. Jones?

A. Not to me.

Q. To whom was it paid by, Mr. Jones, or by the house of Smith Bell & Company?

A. I don't know.

Q. Now Mr. Jones has other matters in charge for you, has he not, involving the sale of property?

A. No, not sales of property.

Q. Does Mr. Jones from time to time render statements?

A. When I want them.

Q. Of sales of property by him?

A. There were no sales of property.

Q. Did Mr. Jones never render you a statement of the pro-
26 ceeds he has received for this stock?

A. No, sir.

Q. You and Mr. Strong and Mr. Jones then, in fact, had talked quite a good deal about the value of this stock immediately on coming back from Europe?

A. By reading it in the newspapers, of course, that is all.

Q. What was it you read in the newspapers, say in July or August, on your return from Europe, that made you think this stock was valuable?

A. I always knew it was valuable.

Q. For what reason?

A. I have been here for fourteen years.

Q. What was it you read in the newspapers, after you returned from Europe, that led you to think, this stock was going to be valuable: was it referring to the negotiations between the Government and these companies for the sale of the lands?

A. I always knew it was valuable.

Q. You are very well acquainted with the character of the lands owned by the Philippine Sugar Estates Development Company?

A. Yes, sir.

Q. And for that reason you say you always knew what the stock was worth?

Mr. KINNEY: I object.

Mr. MARPLE: I withdraw the question.

Q. And it was because you knew of the lands owned by the Philippine Sugar Estates Development Company, that you knew always that the stock was valuable, is that right?

27 Mr. KINNEY: I object to that also.
Mr. MARPLE: I withdraw the question.

Q. Is it not a fact, Mrs. Strong, that after your return from Europe, you read in the newspapers references to the probable purchase by the Government of the lands of the Philippine Sugar Estates Development Company?
A. Yes, sir.
Q. And the papers of Manila had many such references during this time, did they not?
A. Yes, sir.
Q. And these articles, or rather this subject of the sale of the Friar lands, was a matter of frequent discussion between your husband and yourself?
A. No, not of frequent discussion.
Q. Mrs. Strong, can you say that Mr. Jones did not dispose of other properties for you: did Mr. Jones dispose of the Oriente Hotel stock for you?
A. I don't know.
Q. It is a fact that you had stock, had you not, in the Oriente Hotel, which was disposed of by someone?
A. I had the shares in the Oriente Hotel, yes, sir.
Q. Do you know whether or not they were disposed of?
A. I don't know, I don't understand.
Q. In whose hands were those shares left to be disposed of; Mr. Jones?
A. I don't know.
Q. Who would know about that, Mrs. Strong, if you do not?
A. I don't know.
Q. And how about the stock in the Manila Trading Company; did Mr. Jones dispose of any of that for you?
28 A. Yes, shares.
Q. And in the Manila Land Company, did you have stock in that Company?
A. Yes, sir.
Q. Has that been disposed of?
A. Yes, sir.
Q. By Mr. Jones?
A. No, sir.
Q. Mr. Jones did not have charge of that stock?
A. No, sir.

Redirect examination:

Mr. KINNEY: Mrs. Strong, did Mr. Gutierrez ever tell you that he was negotiating with the Government for the sale of the Friar lands?
A. No, sir.
Q. Did he ever tell you he had an offer from the Government to purchase these lands?
A. No, sir.
Q. Did Mr. Gutierrez ever tell you what was the condition of the

negotiations which were going on between the Government on the one part, and the owners of the Friar lands on the other?

A. No, sir, never.

Recross-examination:

Mr. MARPLE: You never asked Mr. Gutierrez anything of this kind did you, Mrs. Strong?

A. No, sir.

Q. Let me ask you if Mr. Wood, or his firm of Smith
29 Bell & Company, did not take charge of your interests in Cebú in certain oil and coal lands?

A. I don't know.

RICHARD P. STRONG, recalled by the plaintiff, testified as follows:

RICHARD P. STRONG, recalled on behalf of the plaintiff, testified as follows:

Mr. KINNEY: Did Mr. Gutierrez ever tell you of the condition of the negotiations between himself, as representing the Philippine Sugar Estates Development Company, and the Government, looking to the purchase of the lands of the Philippine Sugar Estates Development Company?

Mr. MARPLE: Objected to as immaterial and irrelevant, and not tending to establish any issue in the complaint.

Objection overruled, and exception taken.

A. No, sir.

Q. Did he ever tell you that he had an offer from the Government for these lands?

Mr. MARPLE: Same objection.

Objection overruled, and exception taken.

A. No, sir.

Cross-examination:

Mr. MARPLE: You never went to see Mr. Gutierrez about this transaction, did you?

A. No, sir.

Q. And you never asked him whether he was going to sell to the Government?

A. No, sir.

Q. Now did you not talk with Governor Taft and General Smith, at the time, about the Friar lands negotiations?

30 A. I never mentioned it, sir.

Q. Why not?

A. I am not in the habit of mentioning private affairs to Government officials. In fact, from the time I received Mr. Sloan's letter until I heard that the shares were sold on that evening when I read about it in the Manila Times, and had the conversation with Mr. Jones, I had no idea of the negotiations.

Q. Was not the fact that eight hundred shares of stock, owned by Mrs. Strong, in the Philippine Sugar Estates Development Company, a matter of some importance to you?

A. It was of some importance, of course.

Q. That certainly was on your mind, was it not, when you got this letter from Mr. Sloan?

A. For the time being I did not mention it.

Q. But you thought a good deal about it after this sale went through, after the Government agreed definitely to purchase these lands?

A. Naturally, I thought the shares would become valuable.

Q. And you thought when Mr. Sloan wrote you the letter asking you to sell, that the same shares would be valuable, did you not?

A. I did.

Q. And you allowed Mr. Sloan to continue the negotiations?

A. No, sir.

Q. Did you not refer him to Mr. Jones?

A. I told him we would have to discuss the matter later.

Q. And you referred him to Mr. Jones?

A. I told him we would have to discuss the matter with Mr. Jones, as he had the shares in his possession at that time.

31 Q. And then you went to Mr. Jones and told Mr. Jones about it?

A. I mentioned to Mr. Jones that there had been an offer for the shares from Mr. Sloan, but did not mention what kind: I never expected Mr. Jones would sell the shares.

Q. And Mr. Jones did not say what you ought to get for them?

A. No, sir.

Q. And you did not tell Mr. Jones what the stock ought to bring?

A. No, sir.

F. STUART JONES, witness for the plaintiff, being duly sworn, testified as follows:

Mr. KINNEY: State your full name and address?

A. F. Stuart Jones, 137 Calle Marina, Ermita.

Q. What is your occupation?

A. Merchant.

Q. How long have you resided in Manila?

A. Off and on, since 1880.

Q. Are you acquainted with Dr. Richard P. Strong and his wife Eleanor Erica Strong?

A. Yes, sir.

Q. What business relations have you occupied with Mrs. Strong or Dr. Strong, or both?

A. With Dr. Strong, the firm in which I am, employed him as their medical attendant for a couple of years. As to Mrs. Strong, I have looked after her interests since the death of her late husband, with Mr. Robert Wood. While I have been here, of course I looked after it.

Q. Where is Mr. Wood, of whom you speak now?

A. In London.

Q. How long has he been away from here?

32 A. He left in July, 1902.

Q. You say you have been looking after the affairs of Mrs.

Strong first with Mr. Wood, and after his departure alone: what sort of authority did you have from Mrs. Strong to represent her, oral or written?

A. It has been oral.

Q. Did you have any written authority from her?

A. There was a power of attorney, made while I was away, in the joint names.

Q. Joint names of whom?

A. Robert Wood and myself.

Q. Have you that power of attorney?

A. No, I have not got it now.

Q. Do you know where it is?

A. I think you have it, Mr. Kinney.

Q. I will hand you a document: is that the power you refer to, Mr. Jones?

A. Yes, sir. No, that is made out in my name: I think there was one made out in the joint names of Robert Wood and myself.

Q. Did you ever have the paper which you have just examined in your possession?

A. That is hard to say, I think I must have had it.

Q. Did you not give that paper to Mr. Sutro?

A. I gave him one power of attorney, and I think that is it.

Q. Do you remember the execution of that paper: when it was executed and the circumstances?

A. I think it was when Mrs. Strong went away from here, to enable me to collect money for her.

Q. This paper then is not the one to which you refer when
33 you said, that there was a joint power of attorney to you and Mr. Wood?

A. That was the power of attorney I understand I gave to Mr. Sutro, and I thought, as far as I remember, it was made out in the joint names of Robert Wood and myself.

Q. Do you remember how many powers of attorneys you had from Mrs. Strong?

A. I don't know. As a matter of fact, it is only just lately I began to look up these things. I always understood we had the right to look after her affairs. I never looked into the powers of attorney.

Q. You only gave Mr. Sutro one power of attorney, did you not?

A. Yes, sir.

Q. Are there any other papers or writings, Mr. Jones, from Mrs. Strong, giving you authority to represent her and take charge of her affairs?

A. Not that I know of, I have not got any.

Mr. KINNEY: We offer in evidence the document which the witness just testified about, and ask that it be marked Exhibit A.

Mr. MARPLE: Objected to as irrelevant and immaterial.

Objection overruled, and exception taken.

Q. You had no other written authority from Mrs. Strong except that paper, and the one which you think was made jointly to you and Mr. Wood?

A. No other, no, sir.

Q. Now if the paper which is here is the one you gave Mr. Sutro, then you are mistaken in thinking you gave him a power of attorney, jointly given to you and Mr. Wood?

Mr. MARPLE: Objected to as argumentative.
The COURT: Objection sustained.

34 Mr. SUTRO: You think still the power of attorney which you gave Mr. Sutro, was the joint power of attorney to Mr. Wood and yourself?

Mr. MARPLE: Objected to as having been already answered.
The COURT: Objection overruled.

A. I gave you one power of attorney, Mr. Sutro, and now I think I must be mistaken, because as far as I remember, I am not clear on the point, I gave you one power of attorney, and that is the only power of attorney there is.

Q. How, and under what circumstances, did you become Mrs. Strong's agent, to represent her?

A. Through being an old friend of hers.

Q. Did you receive any compensation?

A. None at all.

Mr. MARPLE: I move to strike that out as immaterial and irrelevant.

Objection overruled, motion denied and exception taken.

Q. Have you ever consulted with Mrs. Strong about the sale of her shares in the Philippine Sugar Estates Development Company?

A. No, sir.

Q. How long were these shares in your possession?

A. From the time the new scrip was issued: the Company would know when they issued scrip. Except when I was away from here. I was in posession of it.

Q. What part did Mrs. Strong take in the management of her own affairs, directing you what should be done?

A. She did not take any part; there was very little to do, just to give her an income, that is all.

Q. Could you tell what you know about the negotiations
35 which led up to the sale of the stock, which is the subject of this suit?

A. Mr. Sloan came to me one day and asked about the sale of Mrs. Strong's shares, and I said: "Well, what about the price." I thought if I got a good price it would be a good thing to sell. I saw him once or twice, perhaps three times, and eventually he got the price up to $16,000, at which I closed with him.

Q. Did you know anybody else in the transaction except Mr. Sloan?

A. No, sir, not then.

Q. Did Mr. Sloan tell you for whom he was getting the stock?

A. No, sir.

Q. Did you know that Mr. Sloan was acting as a broker?

A. Yes, sir.

Q. When did that transfer take place?

A. The check was paid on the 10th of October.
Q. What year?
A. 1903.
Q. How long did the negotiations last, which resulted in the transfer by you, through Mr. Sloan, of this stock?
A. It was very hard to say exactly the number of days, I think about two weeks, or perhaps three weeks.
Q. Was more than one price mentioned during these negotiations?
A. Yes, sir.
Q. What were the prices mentioned?
A. $8000, $15000, and finally $16000.
Q. What currency?
A. Mexican currency.
Q. Were these prices named, offers to buy or to sell?
A. Offers to buy.
Q. Who made you the offer of $8,000?
36 A. Mr. Sloan.
Q. Who made you the offer of $15,000.00?
A. Mr. Sloan.
Q. Who made you the offer of $16,000.00?
A. Also Mr. Sloan, on my indication.
Q. And the offer of $16,000 that was made, you accepted?
A. Yes, sir.
Q. Did you know or had you any reason to believe, that Mr. Sloan was representing Francisco Gutierrez Répide in that transaction?

Mr. MARPLE: Objected to as incompetent, and assuming a fact not proven: it is also immaterial and irrelevant, and does not tend to establish an issue in the case.
Objection overruled, and exception taken.

A. No, sir.
Q. When did you first know that the stock did go to Mr. Gutierrez?
A. After it was announced in the newspapers that the sale of the Friar lands had gone through.
Q. Fix the date in time as near as you can?
A. It is very hard to fix the date.
Q. As a matter of fact, the sale did go through on the 22nd of December, 1903: fix that as the date, so the record will show it?
A. On or about that date: it must have been the 22nd of December, 1903.
Q. When did you apprise Mrs. Strong of the fact that you had made this sale through Mr. Sloan?
A. About the 1st of December.
Q. It was subsequent then to the time you told Mrs. Strong that you had made this sale, that you learned the stock had gotten
37 into the hands of Mr. Gutierrez?
A. Yes, sir.
Q. What, if anything, did Dr. Strong or Mrs. Strong say to you at the time you told them this stock was sold?

Mr. ROHDE: Objected to as immaterial and irrelevant.

The COURT: Objection overruled on the ground that it is material to show whether or not the contract was ratified.
(Exception.)

A. They said nothing at all, as far as I can remember, but looked disappointed.
Q. Did Mrs. Strong or Dr. Strong, take the matter of the sale up with you subsequent to that time?
A. Yes, sir.
Q. How: state what was done by either of them, so far as you know, after they found this stock had been sold; and what steps were taken by you, if any?
A. They asked what steps could be taken to recover the stock.
Q. Did you yourself take any steps to see whether it could be recovered?
A. No, sir; I took steps to see whether I could get any more money.
Q. When were these steps taken, Mr. Jones?
A. On or after that date, the 22nd of December, 1903, when the sale of the Friar lands became known.
Q. What steps, if any, did you take to ascertain the value of the stock at the time these negotiations were going on between you and Mr. Sloan?
A. I did not take any special steps. I asked one or two friends in reference to whether it would be a good thing to sell this stock.
Q. What effect, if any, would it have had upon the price at
38 which you were willing to sell the shares, or your inclination to sell them at all, if you had known that the purchaser was Mr. Francisco Gutierrez Répide?

Mr. ROHDE: Objected to as immaterial, on the ground that the witness cannot testify to that at the present time; if he did not know at that time, he cannot now say what effect it would have had upon him if he had known that Señor Gutierrez was the purchaser. Furthermore, it is absolutely immaterial who the purchaser was, or whether it was Señor Gutierrez or not, because Señor Gutierrez had the same right as any other citizen in the Philippine Islands to purchase this stock; and for the further reason, that under the law Mr. Jones had no right to know from the broker who the purchaser was, and it was the duty of the broker under the law to keep the name of the purchaser a secret as provided for in the Code of Commerce.
Objection overruled, and exception taken.

A. I should not have sold.
Q. Why would you not have sold?

Mr. ROHDE: Same objection.
Objection overruled, and exception taken.

A. Because he being the representative of the Philippine Sugar Estates Development Company, the mere fact of his wanting to buy the shares at this time, would have shown that there was some increase in the value.
Q. Did you know at the time these negotiations were going on that

Mr. Gutierrez was conducting the negotiations with the Government for the sale of these lands?

A. No, except in a general way that he was the representative of the Philippine Sugar Estates Development Company, and it being in treaty for the sale.

39 Q. What did you do with the money which you got for these shares?

A. I paid it in to the Hongkong and Shanghai Banking Corporation to Mrs. Strong's account.

Q. Is this the account that Mrs. Strong keeps, or the one that you keep as her representative?

A. The one that Mr. Wood and I keep as her representative.

Q. How much did you receive for these shares?

A. $16,000.00 Mexican Currency.

Cross-examination:

Mr. MARPLE: Do you know the defendant in this case, Mr. Gutierrez?

A. Yes, sir.

Q. How long have you known him?

A. A number of years. I first knew him in Iloilo.

Q. You have known him as much as eight or ten years, have you not?

A. Yes, more than that.

Q. You have known him ever since this Philippine Sugar Estates Development Company was organized?

A. Yes, sir.

Q. And one of the organizers of the Philippine Sugar Estates Development Company was Mr. Andrews, the first husband of the present Mrs. Strong, is not that a fact?

A. Yes, sir.

Q. And you have known all the time that these eight hundred shares were in your possession, that Señor Gutierrez was the administrator of the Philippine Sugar Estates Development Company: is not that a fact?

A. He has been latterly, but I cannot remember if he was
40 from the start.

Q. But you knew that he was such an officer at the time you sold this stock?

A. Yes, sir.

Q. Have you stated how long you have resided in the Philippines?

A. Yes, since 1880.

Q. And your occupation, have you stated that?

A. Yes, merchant.

Q. Really you are to-day at the head of the house of Smith Bell & Company in these Islands?

A. Yes, sir.

Q. That is one of the two largest houses in the Philippine Islands, is it not?

A. Yes, sir.

Q. And these negotiations were carried on very largely in Spanish and by Spanish-speaking people, were they not?
A. Yes, sir.
Q. You speak the Spanish la-guage very well?
A. Yes, well.
Q. And where is the office of the Philippine Sugar Estates Development Company?
A. In Plaza Padre Moraga.
Q. Is it not in the same block with your business office?
A. It is in the same block, yes, sir.
Q. And was at the time you sold these shares of stock?
A. Yes, sir.
Q. Who were the friends that you consulted as to the value of this stock?
A. I did not consult as to the value.
Q. Well, as to the advisability of making the sale?
A. It is difficult to remember: one was Mr. Kaufman.
41 Q. He is a gentleman of long residence in these Islands, is he not?
A. Yes, sir.
Q. And of thorough business experience?
A. Yes, sir.
Q. And probably the other persons you consulted were of the same class?
A. Yes, sir.
Q. And they knew as well as you of the negotiations pending between the Government and the owners of these Friar lands?
A. That I cannot say.
Q. How did you come to make the sale: what reason influenced you in determining to advise with your friends as to the advisability of making the sale?
A. The fact that Mr. Sloan came to me and wanted to buy the stock; and my reason for selling was, that these shares had lain there for a number of years, that nothing had been done, and I had heard of a great many negotiations and talk of the sale, and nothing happened, and my idea was to realize for cash, and put it into something that would give a dividend.
Q. You knew the nature of the holdings of the Philippine Sugar Estates Development Company?
A. Yes, sir.
Q. And you knew that there was an agrarian and political question affecting the direct value of these lands, did you not, at the time?
A. Yes, sir.
Q. Did you take that into account in deciding that the sale was advisable?
A. Yes, unless the Government would buy the lands.
42 Q. And you knew, did you not, that the corporations demanded a great deal more money, that is you knew generally, than the Government had said it would pay for these lands?
A. Yes, that was one reason why I sold: Their demands were so

exorbitant that I thought it would be a still longer time before anything definite was done, and that these shares would lie idle, perhaps for two, three or four years or over.

Q. And is it not a fact that you thought that there was even a possibility of the Government not buying at all?

A. I don't know that that ever occurred: I thought perhaps it might be at some future time.

Q. Did you take into account, in fixing the value of these shares at that time, what would be the value if the Philippine Sugar Estates Development Company had to continue with regard to these lands, in the same position as it had been for the last four or five years?

A. Yes, sir, I thought in that case they would not have much value.

Q. And it was your deliberate judgment then, that if the Government did not buy these lands of the Philippine Sugar Estates Development Company, and they had to continue owning them as they had since the formation of the Company, that such a result might be disastrous to Mrs. Strong, as affecting the value of the stock?

A. That is a rather comprehensive question.

Q. Yes, it does not require yes or no?

A. I thought they would not give much returns if they were carried on as agricultural assets.

Q. What conversations have you had with Mrs. Strong or Dr. Strong relative to the sale of these shares, before you made the sale?

43 A. None at all.

Q. A long time before the shares were sold, at any time from July, 1903 down to the date of the sale, did you have any conversation with Dr. or Mrs. Strong about this stock, even before she went away on her trip?

A. Yes, I think so, I think that we referred to the subject generally, of course, once or twice, I cannot specify.

Q. Did Mrs. Strong ever instruct you that you should not sell these shares of stock for less than par?

Mr. KINNEY: I object.

Objection overruled, and exception taken.

A. I had no instructions to that effect.

Q. And you regarded yourself at the time as absolutely free to sell this stock for Mrs. Strong on what you considered the most advantageous terms possible?

A. Yes, sir.

Q. And nothing that Mrs. Strong had ever said to you conflicted with that belief on your part?

Mr. KINNEY: I object, as calling for a conclusion of the witness.

Mr. MARPLE: I withdraw the question.

Q. Do you remember the circumstances under which these shares of stock were first put in your possession?

A. Yes, sir.

Q. Who brought them to your office?

A. Mrs. Strong and myself.

Q. And ever since that time have they been in your possession?

A. Yes, sir.

Q. Save when they were voted at meetings of the Philippine Sugar Estates Development Company?

A. Yes, sir, but they were never all taken there.

44 Q. Do you remember that with them there was placed in your possession a joint power of attorney from Dr. and Mrs. Strong to you and Mr. Wood?

A. No, sir.

Q. There was such a power of attorney in your possession, have you not so testified?

A. No, sir.

Q. There was a joint power of attorney to you and Mr. Wood?

A. That is what I thought, but I am mistaken.

Q. What made you think that?

A. Because he has acted with me, and when she was away the last time, I thought there was a power of attorney made out, signed by Mrs. Strong, in our joint names: I got that in my head.

Q. What made you think that you had a right to sell these shares of stock to Mr. Sloan?

A. Because I was acting for Mrs. Strong in her business matters.

Q. Then Mrs. Strong had given you authority to sell these shares of stock?

Mr. KINNEY: I object as calling for a conclusion of the witness, and calling for a legal opinion of the witness which it is for the Court to pass on.

Objection overruled, and exception taken.

A. No, sir.

Q. And you sold these shares of stock notwithstanding Mrs. Strong had not given you authority?

A. She never gave me authority for each individual transaction. I acted for her in all her business affairs.

Q. When you say that Mrs. Strong had never given you authority to sell these shares of stock, you don't mean to say that you

45 did have authority from her generally?

A. It was implied.

Q. What did you imply that authority was: what was it Mrs. Strong has said to you, or what acts had you taken in regard to this stock previously, from which you believed you were at liberty to sell this stock?

A. That stock was only part of her estate.

Q. And were you the executor or administrator?

A. No, I regarded myself as her agent.

Q. And you regarded yourself then empowered to sell any part of that estate?

A. Yes, sir.

Q. And did Mrs. Strong know from anything that had been previously said between you and her, that you so regarded your powers?

A. That I cannot say, the question never came up.

Q. When you told Dr. and Mrs. Strong at their house, that you had sold the stock, they did not say to you that you had any power to sell it?

A. No, they did not say I had any power to sell.

Q. And that was about the 1st of December, 1903?

A. Yes, sir.

Q. Is it your custom to submit a statement of account, from time to time, to Mrs. Strong of the condition of her affairs, as administered by you?

A. Yes, sir.

Q. And this money was paid by Mr. Sloan to you personally, was it, Mr. Jones, or to Smith Bell & Company?

A. Paid to me.

Q. About the 10th of October, I think?

A. Yes, sir, about that time.

46 Q. When after that did you submit a statement to Mrs. Strong as to this money?

A. We usually submit the account half-yearly: as a matter of fact, the last half-year's account is made out, but has never gone into her: she has never had it yet.

Q. And this check that you received from Mr. Sloan was deposited by you to this account of Mr. Wood and yourself?

A. Yes, sir.

Q. In account with whom?

A. Mrs. Strong's special account.

Q. And deposited on or about the day you received the check?

A. Yes, on the 11th of October.

Q. There have been payments made since then to Mrs. Strong from that account, have there not?

A. Yes, sir.

Q. There was a payment made in November out of that account to Mrs. Strong, was there not?

A. I think most likely, I cannot actually say now, without looking it up.

Q. You say that the general rule has been that Mrs. Strong drew an income from your operations?

A. Yes, sir.

Q. Was it your purpose to invest this $16,000.00 for her?

A. Yes, sir.

Q. Have you so invested it?

A. Yes, sir, I bought scrip of the Chartered Bank of India.

Q. And with reference to the date of this transaction, about October 10th, when did you invest the proceeds in that stock of the Chartered Bank of India?

A. A few days after.

Q. And that is still there in the stock of the Chartered Bank

47 of India?

A. So far we have only got the receipt for the amount, because the scrip takes some time coming out from home.

Q. And that receipt is in the name of Mrs. Strong?

A. No, in the name of Mr. Wood and myself.

Q. Personally or as agent?
A. In our joint names only.
Q. Did you acquaint Mrs. Strong at the time that you had purchased for her shares of stock in the Chartered Bank of India?
A. No, sir.
Q. And you thought you had just the same power from Mrs. Strong to purchase this bank stock, that you had to sell the stock of the Philippine Sugar Estates Development Company?
A. Yes, sir.
Q. And you place both transactions on the same par?
A. Yes, sir.
Q. You read the Manila papers, do you not?
A. Yes, sir.
Q. And I believe take the Manila Times?
A. Yes, sir.

Redirect examination:

Mr. KINNEY: In cross-examination you testified to a check that you received in payment for this stock: whose check was that, and for what amount?
A. The check was for $18,000.00 Mexican Currency, it was issued by Rueda Hermanos.
Q. Do you know who it was made payable to?
A. I think it was in blank, as far as I remember.
Q. You received $16,000.00, and the check was for $18,000.00?
A. Yes, sir.
48 Q. How did you take out what was coming to you?
A. I gave a check for $2,000.00.
Q. Do you know to whom you gave that check?
A. To Mr. Sloan.
Q. Was that payable in blank, or made payable to anyone?
A. In blank, as I remember.

BARRY BALDWIN, witness for the plaintiff, being duly sworn, testified as follows:

Mr. KINNEY: State your full name, and residence?
A. Barry Baldwin, Manila.
Q. What is your occupation?
A. Merchant.
Q. Had you any official connection with the Philippine Sugar Estates Development Company from July, 1903 until December 25th, 1903?
A. I had.
Q. What position did you occupy?
A. As Vice-President, and Director.
Q. Are you familiar with the negotiations between the Philippine Sugar Estates Development Company on the one part and the Government of the Philippine Islands on the other, looking to the purchase of that Company's lands by the Government?
A. I am not entirely familiar with these negotiations, because I was absent the greater part of the last two years: from April, 1902

to August or September, 1903, I was more or less away from the Islands.

Q. Have you been here continuously since August 1903?

A. Yes, sir.

Q. Who represented the Philippine Sugar Estates Development Company in that negotiation?

49 A. Mr. Gutierrez.

Q. In what capacity did he act?

A. He was managing director.

Q. Managing director of the Philippine Sugar Estates Development Company?

A. Yes, sir, or manager; but I think managing director.

Q. Did he report the progress of his negotiations to the Board of Directors of that Company?

A. It was talked of, I do not recollect any formal report at all made in 1903. The matter was talked of informally at the meetings, I don't think anything went on the records; but not being very conversant with Spanish a great deal might have been said that I would not gather, unless interpreted to me.

Q. Did Mr. Gutierrez ever tell you that the Government of the Philippine Islands ever made him an offer for the lands of the Philippine Sugar Estates Development Company in July, 1903?

A. I was not here then. I knew that negotiations were going on, but as to any definite offer, that I was not aware of in a definite form: but the matter was talked of more or less informally at the meetings until it came to a final settlement.

Q. So Mr. Gutierrez never reported to you that he had this offer?

Mr. MARPLE: Objected to as having been already answered, and as leading and indefinite, no offer having been proven.

The COURT: Objection sustained.

Mr. KINNEY: I withdraw the question.

Q. How much stock of the Philippine Sugar Estates Development Company has been issued?

A. I cannot give you the exact figures, I would have to look at the books to see. I always understood it to be $4,200,000 or

50 $4,300,000. I knew at the time, as I signed a great deal of the stock.

Q. Was there any meeting of the Philippine Sugar Estates Development Company to pass upon the sale of the lands to the Government?

A. Yes, there was a meeting some months ago, I cannot give the exact date. I think the latter part of last year, just before Governor Taft left the Islands.

Q. How long before Governor Taft left the Islands?

A. My recollection is, without refreshing it from the books, that it was about the time he left.

Q. He left on December 24th, 1903.

A. Well, that would agree with what I said.

Q. Was that a meeting of the stockholders and directors?

A. A meeting of both stockholders and directors, according to my recollection.

Q. Did that meeting approve of the sale of the land to the Government?

A. Yes, sir, as I understand it, that was the purpose of the meeting of the shareholders and directors, the meeting I refer to.

Q. Was that meeting held to accept an offer of the Government, or to make an offer to the Government?

A. My recollection is that it was to ratify a contract which was proposed with the Government. I don't know whether it was an offer from the Government or to the Government; but it was to ratify this sale.

Q. Did the Company sell, or make an offer to sell, to the Government all of its property?

A. No, there were certain exceptions.

Q. How much of its property was excepted?

51 A. I am unable to state from my recollection, to give it in detail. There was some real-estate and lands, according to my recollection about one thousand hectares of land.

Q. You mean real estate and buildings: you say real estate and lands?

A. I understand there was some land separate from the buildings: Yes, I mean real estate and buildings.

Q. Do you know the state of the negotiations between Mr. Gutierrez and the Government during the months of September and October, 1903?

A. Yes, I knew something about it.

Q. What did you know about the negotiations during that time?

A. At that time these negotiations did not seem to be going on very well. I don't think at that time the Company cared to sell, that was the attitude of the Company, and the price talked of, I forget what it was but it did not suit the Company; and at that time the negotiations did not seem to be very active.

Q. What price do you speak of, when you say it was not satisfactory to the Company?

A. I cannot recollect any offer being made, or anything else, but it was generally understood that the price the Government was willing to pay, or would be likely to pay, did not meet the views of the directors.

Q. What did you understand that price to be?

A. I don't know of any definite offer, I have no recollection of a definite amount being stated.

Q. Was the price offered satisfactory to you, as a shareholder and director?

A. At that time?

Q. Yes.

52 A. Well, as far as I was concerned, I agreed with the majority. There was no separation from my ideas and their opinion. They were very largely interested and I was very smally interested, and of course they were the people to be satisfied. I do not think the price paid for the land was adequate, or any trade that was talked of, or what was paid in the end, as far as that goes; that is if the Company could have enjoyed the lands. But, of course,

there were a great many difficulties in connection with the administration of the land.

Q. Did you take any part in the negotiations which led up to the sale?

A. I saw Governor Taft I recollect at least once about it.

Q. How long ago was that? Was it after your return to the Islands?

A. I think afterwards, in fact I know it was after: some time in the Fall.

Cross-examination:

Mr. ROHDE: You mentioned the difficulties of the Company in relation to the different lands: will you please state to the Court what they were? The difficulties encountered by the Company in working the lands?

A. Well, the difficulties encountered by the Company were these: they could not get possession of the lands, and the Military would not pay the rent of the buildings, and when we went into Court we did not seem to make any headway in establishing our claims in any direction: we were invariably beaten; and the lands were taxed and we had no money to meet these taxes; and we received no income hardly whatever from the land, or I may say no income to amount to anything; and the expenses were going on, and we were
53 incurring debts.

The Court then adjourned until 2.30 p. m.

Afternoon Session.

GERALD H. L. BALDWIN, witness for the plaintiff, being duly sworn, testified as follows:

Mr. KINNEY: State your full name and residence?

A. Gerald Harold L. Baldwin, 54 Isaac Peral, Ermita, Manila.

Q. What is your occupation?

A. Manager of the Vacuum Oil Company, Manila.

Q. Were you an official or a director of the Philippine Sugar Estates Development Company?

A. I was for a period of two years; but I am no longer director of that Company.

Q. When did your official position terminate with them?

A. My official position terminated last August, but it was prorogued pending the general meeting of the shareholders, until last February.

Q. February, 1904?

A. Yes, sir, I don't remember the exact date of the meeting.

Q. Did you act as director until February, 1904?

A. Yes, sir, I acted as director until February, 1904.

Q. Were you familiar with the negotiations between the Philippine Sugar Estates Development Company on the one part and the Government of the Philippine Islands on the other, in relation to the sale of that Company's lands to the Government?

A. More or less, I know that Mr. Gutierrez, manager of the Company, was carrying on negotiations with the Governor for the
54 sale of the lands; and that during the last six months, from June or July to December, but there was nothing official brought up in the Company about it. We talked about it in an informal way, but there was nothing official until December 2nd, when we agreed to the sale of the estates.

Q. December 2nd, 1903?

A. Yes, sir.

Q. Was that meeting a director's meeting?

A. That was a director's meeting, and I am not very certain, but I have an impression it was a shareholders' meeting: I cannot speak with certainty on that point, however.

Q. You say you knew in a general sort of way that negotiations were being carried on?

A. That negotiations were going on for the sale of the lands.

Q. Is that all you know about it?

A. Yes, sir, all I know about it.

Q. Did Mr. Gutierrez ever tell you, as Director of the Company or otherwise, that he had an offer from the Government for the lands?

A. I understood sometime ago there was an offer made, which the Company would not for one moment entertain.

Q. Do you remember what that offer was: how much?

A. I believe for something like five million dollars, Mexican currency; but it was never entertained for a moment by any member of the Company. I am not sure whether it was a formal offer or not.

Q. Did the Company, as far as you know, the Directors and stockholders of the Company, have a meeting to discuss whether or not that offer would be accepted?

A. No, they did not, to the best of my recollection, I do not remember it being brought up officially. It was discussed
55 informally, but as far as I know, not officially.

Q. Do you know how many shares of stock are outstanding of the Company, or were on the first of January, 1904?

A. I have no idea at all: the shares are made payable to bearer and I don't know where they are.

Q. Do you know the value of the property or the estimated value of the property, which was retained by the Company?

A. Retained by the Company when the sale was made to the Government?

Q. Yes.

A. No, I do not know, I think there were so many hectares, if I remember rightly, and certain estate houses, two estate houses at least; but I was not interested enough to inquire into the actual value of the property.

Q. By whom were the negotiations conducted with the Government, on behalf of the owners of the lands?

A. Entirely by Mr. Gutierrez.

Mr. KINNEY: I will offer in evidence now a certified copy of the letter of July 5th, by the Governor of the Philippine Islands written to the Papal Delegate, and a certified copy of the letter of Mr. Gutier-

rez, enclosing a copy of the letter to the Papal Delegate, and ask that it be marked plaintiff's Exhibit B; to show that on July 5th, 1903, the Governor of the Philippine Islands made an offer for these lands.

Mr. MARPLE: We object to the introduction of this document, as incompetent: an offer for land being no competent proof of the value of those lands; also as being immaterial and irrelevant, no authority of law having being shown for the making of such an offer by the Civil Governor of the Philippine Islands, so as to bind that Government; the representation of Monsignor Guidi for the defend-
56 ant or the Philippine Sugar Estates Development Company or for any of the Friar lands not yet having being shown; and for the further reason that it already appears in the record that the so-called offer of Governor Taft, purporting to have been in this letter, was rejected by the Philippine Sugar Estates Development Company, was rejected by this defendant; and for the further reason that this so-called offer is not for the lands or the stock or other property of the Philippine Sugar Estates Development Company, but purports to be on its face an offer at large, undivided and indivisible for all the so-called Friar lands of the Philippine Islands, embracing at least two other sets of land than those owned by the Philippine Sugar Estates Development Company.

The COURT: It may be admitted.

Mr. MARPLE: Exception.

Mr. KINNEY: I desire now to offer in evidence a certified copy of the agreement made between the Philippine Sugar Estates Development Company Limited, represented by Francisco Gutierrez, attorney-in-fact, and the Governor of the Philippine Islands, contract of sale between the Company and the Governor, and ask that it be marked Plaintiff's Exhibit C.

Mr. MARPLE: We object to this as incompetent, in that it, on its face, shows it is but an executory agreement, conditional upon certain acts and doings which have not as yet been performed, and as not tending to establish in any way the value of the property in issue herein: one of the conditions of said agreement being the investigation of the title on the part of the Philippine Government, and the acceptance by that Government of such title, conditions which have not yet been complied with.

57 The COURT: It may be admitted.

Mr. MARPLE: Exception.

Mr. KINNEY: I now desire to offer in evidence a certified copy of the articles of association of the Philippine Sugar Estates Development Company, Limited, for the purpose of showing the powers and duties of the general administrator of the Company and of the directors, and ask that it be marked Exhibit D.

The COURT: There being no objection, it may be admitted.

MARCUS MCGREGOR, witness for the plaintiff, being duly sworn, testified as follows:

Mr. KINNEY: What is your name?

A. Marcus McGregor.

Q. Where do you reside?

A. At No. 20 Santa Ana, Manila .

Q. What is your occupation?

—. I am managing agent of the British-Manila Estates Company, Limited.

Q. How long have you been managing agent of the British-Manila Estates Company, Limited?

A. For the last four years.

Q. Does the Company you represent own any part of the lands known as the Friar lands, which the Government of the Philippine Islands have recently bought?

A. Yes, sir.

Q. How were these lands known: to what order of Friars did they formerly belong?

A. They formerly belonged to the Recoletos Order.

Q. To what order, if you know, did the lands which now form part of the Philippine Sugar Estates Development Company
58 belong?

A. I have always understood that they were the Dominican lands.

Q. Exhibit B is a copy of a letter written July 5th, 1903, to Monsignor Guidi, Apostolic Delegate, by Hon William H. Taft, Civil Governor of the Philippine Islands, in which he makes an offer for what is known as the Friar lands: did you receive a copy of that letter?

A. Yes, sir, I did.

Q. In what capacity did you receive it?

A. In the capacity of managing agent of the British-Manila Estates Company, Limited.

Q. Do you know whether or not Mr. Gutierrez received a copy of that letter also?

A. I don't know that he did, I presume that he did, as the Governor told me he was sending copies to all the representatives of these lands.

Q. Did you ever discuss the matter with Sr. Gutierrez, after you received a copy of that letter?

A. Which matter?

Q. The matter of that offer, have you ever discussed with Señor Gutierrez the offer of July 5th, 1903, made by the Governor?

A. I think that it was generally agreed that the offer would not be accepted.

Q. Then you have discussed that offer of July 5th, 1903, with Señor Gutierrez?

A. The reason I replied in that way was, that it has been discussed generally amongst us: but whether I discussed it actually with Señor Gutierrez or not, I could not swear to.

Q. Have you ever discussed with Señor Gutierrez the question of the sale of these lands to the Government?

A. Yes, sir.

59 Q. Frequently or infrequently?

A. Pretty frequently.

Q. You say that the result of the discussion with reference to the

letter of July 5th, 1903, was, that it would be not accepted, that the offer contained therein would not be accepted?

A. I do not think that any of the agents of the lands in question ever contemplated accepting that offer.

Q. Was that offer, so far as you know, ever withdrawn?

A. Not that I know of.

Q. Were the negotiations with the Governor continued after that time?

A. Yes, sir.

Mr. MARPLE: I move to strike out the answer, on the ground that it does not refer to negotiations carried on by this Defendant or by the Philippine Sugar Estates Development Company, and any other negotiations are irrelevant and immaterial.

Motion denied, and exception taken.

Q. By whom were the negotiations conducted after July 5th, 1903 with Governor Taft or with the other members of the Civil Commission, in relation to the sale of these lands?

Mr. MARPLE: Objected to as absolutely irrelevant and immaterial, except it be confined to negotiations between the Government and the lands of the Philippine Sugar Estates Development Company; and even then it is incompetent and does not tend to establish the value of the property in issue.

Objection overruled, and exception taken.

A. As far as our own lands were concerned, the British-Manila Estates Company's lands, they were of course conducted by
60 myself; but I found, after I had been dealing with Governor Taft for some little time, and had made certain propositions to him as regards the price of the lands, I made one offer to him which he intimated to me might be accepted, if I could persuade the other representatives of the lands, to reduce their price in the same proportion as I had done. I thereupon set about trying to persuade the representatives of the other lands to make reductions as I had done in price, otherwise I could not sell my own lands, as the Governor intimated that they were not willing to buy my lands unless they could buy the rest.

Q. About what time was that?

A. I think about the beginning of October. I kept no diary of the dates from day to day, and can now only depend on the letter I wrote home to the Chairman of our Company reporting the matter fully. I find that the letter I wrote home (consulting the letter-press book) was dated October 15th, so that,—will you please repeat the question?

Q. About what time was it that Governor Taft made this intimation to you, which led you to open negotiations with those other agents, representing the other Companies, to see if you could get them to come to the same proportionate price that you were willing to accept?

A. In August, as far as I can make out from my letters.

Q. With whom, as representing the other owners of the Friar

lands, did you take this matter up with, after you had reached that stage in the negotiations with Governor Taft?

A. I occasionally visited Señor Gutierrez, Padre Juan Martyns, who represented the Compañia Agricola de Ultramar, and the head of the Recoletos Order, who represented the Mandelion Estate.

61 Q. You have spoken just now of three groups; you omitten the Recoletos estate of Mindoro?

A. That was negotiated for separately.

Q. There were three big groups, and the Mindoro estate was comparatively a small one?

A. Yes, that is so.

Q. Did you see anyone else, representing the Philippine Sugar Estates Development Company, besides Señor Gutierrez?

A. Yes, I have spoken to Mr. Barry Baldwin and Gerald Baldwin.

Q. What was that offer you had from the Governor on which you undertook negotiations with these other owners?

Mr. MARPLE: Objected to as immaterial and irrelevant: this concerns another company entirely, and the authority of Governor Taft to make the offer not having appeared, and further, no authority for the offer has been shown, the offer must be in writing, and as not the best evidence.

Objection overruled and exception taken.

A. I think you have not quite understood me: do you mean the offer Governor Taft made me for my own lands?

Q. You have stated just now that, after a discussion with Governor Taft, he intimated to you that if you could get the other companies to follow the idea you had taken, he would probably consider the proposition, and you endeavored to induce them to do so: what was that proposition that the Governor intimated to you might be considered?

A. That was the forty per cent. reduction of the original price, a reduction of our original demands.

Q. Was the offer of the Government, contained in Governor Taft's letter of July 5th, met with a counter offer on the part of the owners of the lands?

62 A. To the best of my belief no counter offer was made in writing, unless Monsignor Guidi did so, but he did not notify us of any other offer.

Q. Were any figures submitted to the Governor, or any price fixed by the owners?

A. I am dealing all the time with the Governor myself, but first of all on behalf of my own lands.

Q. What price was fixed for the whole lands, if any, which you say were subsequently reduced forty per cent.?

A. I drew up a statement showing that the Philippine Sugar Estates Development Company were to have so much, the Compañia Agricola de Ultramar so much, the British-Manila Estates Company so much, and the Mindoro Estate so much, which made a total of thirteen million dollars.

Q. State what each one of them would have taken?

A. This is what I understood to be the original demand, I have no proof that it was, but these are the figures we relied on and showed to everybody.

Q. Did you show them to Señor Gutierrez?

A. Yes, sir, I had him down for six millions.

Q. What currency?

A. Gold.

Q. Are all these figures in gold?

A. Yes, sir, and I had the Compañia Agricola de Ultramar down for five millions, and my own Company for two millions, and the Mindoro Estate for seven hundred thousand: that is $13,700,000 gold, and I relied on that as the basis for the reduction of 40 per cent.

Q. That was the basis of the negotiations you opened with Governor Taft, after the offer of July 5th, 1903?

A. Yes, sir, on the basis of those figures.

63 Q. So the reduction of forty per cent. to which you refer was a reduction of forty per cent. of these figures?

A. Yes, sir. This would give the Philippine Sugar Estates Development Company $3,000,000; the Compañia Agricola de Ultramar $3,000,000; the British-Manila Estates Company $1,200,000 and the Mindoro Estate $420,000. I want it to be understood that neither the Compañia Agricola de Ultramar nor the Philippine Sugar Estates Development Company ever declared officially what they would take for their lands, and these are figures that I made.

Q. If I understand you correctly, your offer, in the negotiations which you had after July 5th, 1903, was to include the other persons, representing the owners of these lands, to come to the figures which you have just read?

A. Yes, sir.

Q. Did you try to induce Señor Gutierrez to come to the figures which you have there, for the Philippine Sugar Estates Development Company?

A. Yes, sir, I did.

Q. Did you succeed?

A. Mr. Gutierrez intimated that such a reduction might be accepted by him, but there was nothing absolutely definite.

Q. You fix the time, I believe, on which these negotiations began on that date, as August?

A. Yes, it was about August when Governor Taft told me, that if I wanted to get my lands sold, I must get the other people to reduce their prices in the same proportion I was willing to do.

64 Q. It was at that time that you went to work on the others?

A. That is the time I set to work to try to induce the others to reduce their prices.

Q. Through what space of time did these negotiations run which you were conducting, trying to bring all the parties together?

A. On October 15th I wrote to the chairman of my company in London that I had hopes to bring something off at last; that Señor Gutierrez showed signs of being willing to reduce his price.

Q. At that time had the representative- of the other companies agreed about the price?

A. They had. The Recoletos had agreed, and the Compañia Agricola de Ultramar: I think at that time the Agent was in Shanghai, but it was intimated to me that the Company would doubtless agree to such reduction.

Q. Now go ahead and detail the negotiations which finally terminated in the sale?

A. I was authorized to make an offer to Governor Taft, by the other people connected with the Friar lands, of $8,500,000, and authorized to say that if such an offer was made, I had good reason to believe it would be accepted. That offer was refused. Governor Taft, after consulting with the Commission, refused to accept it.

Q. Who authorized you to make this offer, on behalf of the Philippine Sugar Estates Development Company?

A. Señor Gutierrez.

Mr. MARPLE: When was that offer made?

A. In October.

Mr. MARPLE: What date?

A. I can't tell the date, I kept no diary, I can only judge
65 my dates from letters I wrote home; I wrote home October 15th to that effect. No, it was towards the end of October that I made that report, because I see in my letter that I have been trying to get an interview with the Governor.

Mr. KINNEY: Go ahead and tell us what happened up to the final closing of the sale?

A. Governor Taft would not accept this offer. He put this offer to the Commission and informed me that the Commission would not think of it, and at the same time made me a counter offer, and asked me to put it before the rest of the people, of $7,250,000.

Q. Before whom did you put that offer?

A. I mentioned that, I think, to Señor Gutierrez, but I remember at the time thinking it was very low, and feeling certain that the Governor would go above it. I then proposed to make an offer of $8,000,000, and if this turned out useless, proposed to make a counter offer of 45 per cent., which would make $7,535,000: that is 45 per cent. reduction from our original price.

Q. Was that the figure at which you closed?

A. I spoke to the Governor about the $8,000,000, and he would not listen to that, and finally I received an offer from the Governor of 45 per cent. reduction. What I wrote to my people will give you an idea, I say I have asked Governor Taft if he will offer the reduction of 45 per cent., which would come to $7,535,000, but added that I don't know that such an offer would be acceptable. The Governor asked me how much that would give my company, and I said $1,100,000.

Mr. MARPLE: What is the date of that letter?

66 A. That letter is dated November 9th, probably it took place a fortnight before.

Mr. KINNEY: And are those the figures you closed on?

A. That was the final offer made for the land to me, but Gov-

ernor Taft said that for certain reasons the offer had to be put through Monsignor Guidi.

Mr. MARPLE: We object to what the Governor said to Mr. McGregor as incompetent, and hearsay, and move to strike out all such testimony.

The COURT: I will rule it out if not brought home to Mr. Gutierrez.

Mr. KINNEY: You want to finish your answer: go on, Mr. McGregor?

A. Governor Taft made me that offer on the basis of a 45 per cent. reduction, and that offer had for certain reasons to be confirmed in writing to Monsignor Guidi, and in confirming that offer to Monsignor Guidi worded his letter: I saw the letter, he read it to me.

Mr. MARPLE: I object to the witness telling of the contents of the letter, even if he saw it.

Mr. SUTRO: Don't say what was in the letter.

The COURT: The contents of the letter will not be admitted.

A. Without mentioning the contents of the letter I cannot tell what the final offer was, because Governor Taft made a mistake and worded it as an increase of 25 per cent. to the original offer instead of a reduction of 45 per cent., and this increased the amount he had offered by something like $900,000.

Mr. MARPLE: We object, the witness has brought in the letter contrary to the instructions of your Honor.

The COURT: Strike out that part relating to the letter.

67 Mr. KINNEY: Just state whether or not that last figure, $7,535,000, was the amount finally agreed upon: you made that offer?

A. Yes, sir.

Q. And the Governor accepted it?

A. Yes, finally the Governor accepted it.

Q. Were these the figures on which the sale was finally made, just answer yes or no?

A. No, sir.

Q. Then what were the figures on which the sale was finally made?

A. An increase of 25 per cent. on Governor Taft's offer of July 5th, I understand the offer was an increase of 25 per cent. of the Governor's original offer.

Q. By that you mean Governor Taft's offer of July 5th?

A. Yes, which was $6,043,219.07 gold.

Q. Have you the final figures?

A. No, sir.

Q. Do you know how much was finally paid?

A. How?

Q. For all the Friar lands?

A. There were certain deductions and additions made at the last moment that altered all the prices, but I have not a note of them.

Q. In round figures: you can go within $100,000 of the amount paid to all, can you not?

A. I think $7,200,000. I really would not like to say.

Q. 25 per cent. added to the original offer would be $7,534,000?

A. There were certain deductions made, certain lands left out of the Mandelion Estate, and one thousand hectares of land and two houses were cut out of the Philippine Sugar Estates Development Company. I could easily find out, but I have it not here,

68 I have it in the office.

Q. After this final offer was made by Governor Taft, did Mr. Gutierrez agree to it?

A. He did not agree to that, no.

Q. What was necessary to get his consent?

A. He wanted his share raised.

Q. Was it raised?

A. Yes, sir.

Q. To what extent was it raised, approximately?

A. To the best of my recollection $335,000, but cannot tell you the exact amount, I could tell by looking at my copy book.

Q. Was that increase of $335,000, or about that, conceded to Mr. Gutierrez?

A. Yes, sir.

Q. Who agreed to pay it?

A. I am not bound to say exactly who paid it; it was paid between us.

Q. It was not paid by the Government?

A. No, it was paid by the owners of the Friar lands.

Q. In other words, the owners of the Friar lands gave up a part of what they were to get to Señor Gutierrez, to get him to consent to sell his part?

A. Yes, sir.

Q. They made a sacrifice so as to put the negotiations through?

A. Yes, sir.

Q. Did that appear in the contract which he made with the Governor?

A. I don't know. I never saw it.

Q. Have you and your other associates any agreement with

69 Señor Gutierrez to pay him or his company that $335,000?

A. I don't know, I have none.

Q. Has your company?

A. No, sir, our Company has not.

Cross-examination:

Mr. ROHDE: One offer you state that the other companies would have accepted, that is the other companies would but the Philippine Sugar Estates Development Company did not? how do you know that?

A. Because I was negotiating for the other companies.

Q. What authority did you have?

A. None, only verbal.

Q. From whom?

A. It was understood between Governor Taft, and myself, and Monsignor Guidi.

Q. Monsignor Guidi had no authority to grant you?

A. He did not grant me any.

Q. Where did you have the authority to negotiate on behalf of the other companies?

A. From the head of the Recoletos Order on behalf of the Mindoro Estate.

Q. The Recoletos Order was not a party to the transaction, was it?

A. Yes, sir.

Q. As such?

A. The Mindoro Estate was owned by that Order.

Q. They own stock?

A. They own the Estate.

Q. That Mindoro Estate?

A. Yes, sir, and with regard to the Compañia Agricola de
70 Ultramar I was given to understand at that time.

Q. By whom?

A. At that time Padre Juan Martyns, who was the managing agent of the Compañia Agricola de Ultramar, was in Shanghai, and I was told, I need not say by whom, that the Campañia Agricola de Ultramar would doubtless agree to these figures.

Q. Then, in fact, you had no authority whatever?

A. To do what.

Q. To do anything on behalf of these concerns?

A. Yes, I had.

Q. Simply granted you verbally?

A. There was nothing in writing.

Q. By the administrators of the corporations?

A. I had Señor Gutierrez's authority to make certain proposals to Governor Taft.

Q. Who had authority to accept those offers on behalf of the other corporations?

Mr. KINNEY: Objected to, as Mr. McGregor is not qualified to state that.

Objection overruled, and exception taken.

A. I understand that Señor Gutierrez had authority for the Philippine Sugar Estates Development Company; I had authority for my own Company; the head of the Recoletos Order had authority for the Mindoro Estate; and immediately Padre Juan came back from Shanghai, he had authority for the Compañia Agricola de Ultramar, he is their agent.

Q. And you say he had authority to accept?

A. Yes, sir.

Q. And you are just about as certain of that as you are in
71 saying that Señor Gutierrez had authority to accept in behalf of the Philippine Sugar Estates Development Company?

A. They informed me that they had authority.

Q. Who told you?

A. Mr. Gutierrez told that he had authority to accept in behalf of the Philippine Sugar Estates Development Company, but that a

meeting of the Directors or shareholders would have to be called to confirm it, and he called a meeting to confirm it.

Q. Was this not the same case with the other companies?

A. I don't know, you see the Recoletos are not a Company but private people owning some land, and the head of the Order had full power.

Q. With your company how was it?

A. I was authorized to accept it at a certain price.

Q. At a certain price from the stockholders?

A. From my chairman, I had my orders from the chairman of the British-Manila Estates Company, the president of the Company.

Q. Communicated to you in writing?

A. Yes, sir.

Q. Have you got it here?

A. Yes, but I would rather not show it, it is private information.

Mr. ROHDE: We ask that he produce that authority.

Mr. SUTRO: What is the purpose of it, we submit that private instructions to Mr. McGregor should not be called for.

The COURT: The request will be denied.

Mr. ROHDE: Exception.

72 Redirect examination:

Mr. KINNEY: Was this offer of July 5th, 1903, and the various negotiations between that time and the closing of the sale, matters of a private nature, or generally known?

A. They were private.

Q. Almost confidential, were they not?

A. Yes, sir. I want to make a statement or explanation. I want to say that Monsignor Guidi said that nothing could be definitely fixed until Padre Juan came back from Shanghai, as it was essential he should be here at the closing stages of the negotiations; and he said that he had wired him to come back, and when he came back, after the final offer was made to me and confirmed to Monsignor Guidi I did practically nothing else but negotiate about my own Company, fixing the price. At this stage of the proceedings, after the final offer had been made, Monsignor Guidi did most of the negotiations direct with the Governor, although I was at the same time negotiating between the two of them.

Mr. ROHDE: I move to strike out the testimony of this witness about any final offer made to him and confirmed by Monsignor Guidi, as incompetent a ot the best evidence, Monsignor Guidi being the only one who can testify; and as a conclusion of the witness as to what Governor Taft confirmed to Monsignor Guidi.

The COURT: What do you mean by confirmed to Monsignor Guidi?

A. I refer to the letter, the letter I referred to before and to which exception was taken.

The COURT: The Court states that this statement of Mr.
73 McGregor was put in in order to clear himself — any future question should come up, and anything that is hearsay or

relates to the contents of the document will not be taken into consideration by the Court in its decision in the case. The motion to strike the testimony out is denied.

Mr. ROHDE: Exception.

Recross-examination:

Mr. MARPLE: Will you turn to your letter-press book and see if you can find the page on which this appears (showing witness a document) It is so indistinct I cannot read it.

A. I do not think I have that.

Q. Did you not place in your book of correspondence, or in your copy-book somewhere, these figures which you now hold in your hand, and of which this which I have just handed you is an apparent copy?

A. I don't think I ever press-copied that.

Q. It is important to us to have this, and that is the reason why I ask you if you have in your book anything corresponding to it?

A. I copied that from this document now in my hands, to the best of my recollection.

Q. And you made it yourself?

A. I did.

Q. If Monsignor Guidi has the original, will that interfere with your giving us a copy by to-morrow?

A. I cannot swear as to that being a copy; but I will get you a copy, yes, sir.

Q. Does that show, that which you have in your hands, these valuations and enumerations which you have testified to

74 as being communicated to Mr. Gutierrez?

A. Yes, sir.

Q. Will you produce that for examination?

A. Yes, sir, certainly. (Handing Mr. Marple the document.)

Mr. SUTRO: Did you testify that you handed that document to Mr. Gutierrez, or a copy of it?

A. No, I could not swear to that. I sent Monsignor Guidi a statement of figures similar to that.

Mr. SUTRO: And did you see it in Monsignor Guidi's hands?

A. Yes, and Monsignor Guidi read it out as a statement of figures.

Mr. SUTRO: Was that the same paper you gave Mr. Gutierrez?

A. To the best of my knowledge, yes.

Mr. MARPLE: Do these figures that are private, on the back of this document, bear at all on any question put to Mr. Gutierrez?

A. Yes, but to what extent I cannot tell.

Q. When did you make your figures?

A. I don't remember. At the time of this transaction with Mr. Gutierrez I carried this paper about in my pocket, since about July, and this is the paper I conducted my negotiations on. I have forgotten the date, but this is the bit of paper I always produced and that accounts for its dilapidated condition, and I frequently made jottings on the back of it when I had no other paper available.

Q. What was the day you presented it to Señor Gutierrez?

A. I don't remember.

Q. To the best of your recollection?
A. I would not like to say.
Q. You have no impression about it at all?
A. I have such a very vague one that I do not care to give it.

75 Mr. MARPLE: I ask that this paper be left here, as part of Mr. McGregor's testimony.
The COURT: I will have a copy of it made.
Mr. SUTRO: Was that particular document ever handed to Mr. Gutierrez, that particular piece of paper in the Judge's hands?
A. I carried it in my pockets in his office, and produced it in his office, I don't know whether I ever handed it to him.
Mr. SUTRO: Did he ever have possession of it?
A. He may have had it in his hands for a moment, I really cannot tell you.

JAMES SLOAN, witness for the plaintiff, being duly sworn, testified as follows:

Mr. KINNEY: State your full name and address?
A. James Sloan, Paco, Manila.
Q. What is your occupation?
A. Broker.
Q. What kind of a broker?
A. General Broker.
Q. How long have you been a broker?
A. Twenty years or over.
Q. How long have you resided in Manila?
A. Off and on thirty-nine years.
Q. What is the style of your firm?
A. Sloan & Mitchell.
Q. Are you the Mr. Sloan who acted as broker in the transaction of buying from Mr. F. Stuart Jones eight hundred shares of stock of the Philippine Sugar Estates Development Company?
76 A. Yes, sir.
Q. Please state the circumstances which led up to that transaction?
A. Well, Mr. Kaufman came to me one day and spoke about these shares.
Q. What did Mr. Kaufman say?
A. He asked me to see if I could buy them, as he wished to buy them. I think he said for his wife's family.
Q. How did you know that it was Mr. Kaufman who came to you?
A. Because he introduced himself as Mr. Kaufman.
Q. State what you did after he came to you?
A. I wrote a note to Dr. Strong to ask him about the shares, and he asked me to see Mr. Jones. After a time, I cannot say how long, I did see Mr. Jones. In the meantime Kaufman had been again to me to make an offer for the shares.
Q. How much did he offer?
A. Eight thousand dollars.
Q. What currency?

A. Mexican currency, and that led on in the course of negotiations to the sale at $16,000.00, Mexican currency.

Q. Over what period of time did these negotiations extend?

A. It must have been probably three weeks from the time they began until the sale was completed, I think. I really can't say.

Q. Did you complete the transaction, make the transfer?

A. Yes, sir.

Q. Do you remember how the $16,000.00 were paid?

A. It was paid out of a check for $18,000.00.

Q. Whose check?

A. Rueda Hermanos, as far as I can remember.

Q. Who brought you the check?

77 A. Mr. Kaufman.

Q. What date, if you remember, did the transfer take place?

A. On the 10th of October, I am pretty sure it was on that date.

Q. When were the shares delivered?

A. They were delivered in my office by Mr. Knowles: he brought them down to the office and delivered them to Mr. Kaufman there.

Q. And you received from Mr. Kaufman the check?

A. Yes, sir.

Q. Was the balance between $16,000 and $18,000 paid to Mr. Kaufman?

A. Yes, sir.

Q. After the sale took place when, if at all, did you see Mr. Kaufman after that?

A. I saw him after that again after the sale of the Friar lands was completed.

Q. Did you call on him to see him?

A. I think I sent him a note, and he came to see me, I think we met at any rate after that.

Q. Did you have a conversation with reference to this sale?

A. Yes, sir.

Q. What was that conversation?

A. I suggested that in view of this being a large amount, whether he would not pay something more.

Q. And what did he reply?

A. He said that he did not have the shares, that he would see Mr. Gutierrez about it.

Q. Was that the first time you had heard Mr. Gutierrez' name mentioned in connection with it?

A. I think it was from him, I could not say positively. He spoke of his wife's family with regard to the transaction before.

78 Q. He said his wife's family wished to buy the shares?

A. Yes, sir.

Cross-examination:

Mr. MARPLE: Mr. Sloan, do you keep in the transactions of your business a letter-book?

A. We do for foreign letters, but as a rule we do not keep a letter-book for transactions here.

Q. This letter you sent to Dr. Strong, asking if he had any stock for sale in this company: have you a copy of that?
A. No, sir, it was just a little chit.
Q. And you think that was about three weeks before October 10th?
A. I think it was, as near as I can recollect.
Q. This transaction, did you enter that in the books of your firm?
A. Yes, sir.
Q. You keep regular books don't you, under the Commercial Code to manifest such transactions as these?
A. Yes, sir.
Q. And is this transaction set forth in these books?
A. Yes, sir, it will appear there.
Q. In what book of your entries does that appear? What is the name of the book where this transaction appears?
A. Well, it would be entered in the cash book, I should say, and also we have a book in which is entered our daily transactions.
Q. Then the actual date of this transaction would appear, the date on which Mr. Kaufman came there, that is the date the stock was sold?
A. The date the stock was sold, yes, sir.
79 —. Did you ever see or talk with Dr. or Mrs. Strong?
A. No, I never saw them about it.
Q. You are well acquainted with them, are you not?
A. Yes, sir.
Q. And your business is known to them? the fact that you and Mr. Mitchell are engaged in the brokerage business?
A. Yes, at least I presume so.
Q. What did you do after you got the letter from Dr. Strong telling you to go and see Mr. Jones?
A. I went and saw Mr. Jones, I think.
Q. Have you got the letter you received from Dr. Strong in answer to your letter?
A. I have not got that letter as far as I know. I fancy that letter would just be a chit, and torn up like all other chits, after I had no further use for it.
Q. You kept it for some time?
A. That I cannot recollect, really I don't know.
Q. What did that letter say?
A. As far as I remember it merely told me to see Mr. Jones about the matter, as near as I can remember, of course, it said something else.
Q. It may have had a date with reference to your own letter?
A. I could not say more than that I have a general impression it asked me to see Mr. Jones.
Q. Then you went to see Mr. Jones, and he told you he had this stock for sale?
A. I asked him about it, and he said that he had this stock for sale.
Q. And the negotiations between you and him lasted some weeks?

A. Of course, it may have been a week or so, or perhaps
80 more, before I saw Mr. Jones, after receiving Dr. Strong's letter: as regards to time I cannot say anything more definitely as to how long the negotiations took to come to a close.

Q. Who turned over the shares of stock to Mr. Kaufman?

A. I got them from Mr. Jones and Mr. Knowles came down to my office with them.

Q. Mr. Knowles of Smith Bell & Company?

A. Yes, sir, and he counted them out to Mr. Kaufman.

Q. Was there any receipt for the transaction passed by you to Mr. Jones?

A. No, sir, I did not give any receipt for the shares.

Q. Did you give him any memorandum of the transaction, such as brokers commonly do?

A. No, it was all done, just the delivery and everything simultaneously.

Q. And when did you next see Mr. Kaufman?

A. Well, I have seen him probably occasionally on the streets, or something of that kind, casually, but not to speak about business or anything of that kind: but after the sale of the Friar lands to the Government I saw him with regard to this again.

Q. It was after the report of the agreement of sale of the Friar lands that you first heard a complaint of this transaction was it not?

A. I think so.

Q. Who was it that complained to you then?

A. There was no complaint, but Mr. Jones spoke to me about it.

Q. What did he say?

A. He asked me to see Mr. Kaufman, and see if he could not come to some arrangement for some increase of payment,
81 or something to that effect?

Q. Mr. Jones wanted to see, after the sale was announced, if you could not induce Mr. Kaufman to give more money?

A. Yes, exactly.

Q. When did you first hear from Dr. and Mrs. Strong with regard to the transaction?

A. I don't think I ever heard from them, I don't think I ever spoke to them about it.

Q. And you at the time sent a note to Mr. Kaufman, asking him to come to see you?

A. Yes, that I wished to see him.

Q. Had you not sent for him verbally before that, before you sent that chit?

A. I can't remember, I do not think it likely that I should have done so.

Q. How many times did you talk with Mr. Kaufman about giving Mr. Jones more money than he had paid?

A. Twice at any rate, I don't know if more.

Q. At least twice?

A. Yes, sir.

Q. Upon what theory did you ask for more money for Mr. Jones, if the shares had already been sold: what did Mr. Jones say?

A. He did not say much about it; he said it was a bad job or something to that effect. I really cannot say exactly what he said on the subject.

Q. The complaint was just that he had sold too cheap?

A. Yes, and that he had no idea that the Government was so near buying the land, or something to that effect, as far as I can remember.

Q. He did not say to you anything about not having power
82 or authority to sell these shares?

A. He did not.

The Court then adjourned until the following day.

APRIL 19TH, 1904.

Morning Session.

Mr. KINNEY: I desire to offer in evidence the deposition of Governor Wright, and ask that it be marked Exhibit E. Mr. Marple has agreed to waive notice, and it was agreed at the time the deposition was taken that no objection would be made.

Mr. Kinney then read the deposition, which was accepted without objection, except in the following instances (marked in figures on the deposition):

No. 1 Q. Do you know whether or not an offer was made by the Philippine Government to the Philippine Sugar Estates Development Company, Limited, one of the owners of said lands, for their properties, and if so, when said offer was made?

Mr. ROHDE: I object on the ground that the question is incompetent, because the value of the lands cannot be proven by an offer made for the same, and because if any such offer were made, it must necessarily have been in writing, and, since it is an official act, the writing itself is the best evidence.

The COURT: Objection overruled.

Mr. ROHDE: Exception.

No. 2 Q. At what stage were the negotiations looking to the purchase of these lands by the Government, in the months of September and October, 1903?

Mr. ROHDE: Objected to on the ground that the question
83 assumes the existence of negotiations not yet proven to have existed, during the months of September and October, 1903; and for the further reason that it is immaterial, and does not tend to prove any issue in the case.

Objection overruled, and exception taken.

(Reading continued:)

Mr. MARPLE: I move to strike out that part of the last answer in the direct examination, which says: "and Governor Taft was inclined to make some substantial concessions in the way of an increased price": on the ground of its being the expression of a witness as to the condition or state of mind of Governor Taft, and also be-

cause it does not appear that such inclination of Governor Taft, if existing was ever communicated to the defendant.

The COURT: Motion to strike out sustained on the ground that such an inclination of Governor Taft has not been shown.

(Reading continued to the end without further objection.)

Mr. MARPLE: I will call Mr. Kinney's attention to the 7th line from the end of the last answer of Governor Taft, in direct examination, as follows: "the result * * * was that the Government finally paid for the lands of the Philippine Sugar Estates Development Company". I think that should be "agreed to pay" or "contracted to pay".

Mr. KINNEY: I have no objection to the change.

The COURT: The change will be allowed.

Mr. KINNEY: I will now call Mr. Gutierrez as an adverse witness, and it is stipulated by counsel on both sides, to dispense with the services of an interpreter in the examination of this witness: Mr. Rohde and Mr. Sutro acting in that capacity.

84 FRANCISCO GUTIERREZ REPIDE, witness for the plaintiff, being duly sworn, testified as follows:

Mr. KINNEY: State your full name and residence?

A. Francisco Gutierrez Répide, 29 Calle Cortada, Manila.

Q. State your age and occupation?

A. 41 years of age, merchant.

Q. What official position, if any, do you occupy with the Philippine Sugar Estates Development Company Limited?

A. I am administrator general.

Q. How long have you occupied that position?

A. Since August, 1901.

Q. What are your duties as general administrator of that Company?

Mr. ROHDE: Objected to on the ground that the estatutos of the Company are the best evidence of the duties of the administrator, since they must be defined in the articles of incorporation.

After some discussion, the objection was withdrawn.

A. The title indicates it.

Q. Were you in charge generally of the management of the affairs of the Philippine Sugar Estates Development Company?

A. No, sir.

Q. Then tell us what your functions were?

A. Those fixed by the estatutos.

Q. Is this paper, marked Exhibit D, what you mean by the estatutos? a copy of the estatutos you refer to?

A. (Examining Exhibit D.) This seems to be, but there are modifications of those estatutos: to give an exact answer I would have to read the articles.

Mr. KINNEY: By modifications do you mean that there have been amendments made to the original articles of incorporation?

85 A. Yes, sir.

Q. State what authority is contained in the amendments to the original articles of incorporation?

Mr. ROHDE: I object.

Mr. KINNEY: I withdraw the question.

Q. I hand you now a pamphlet marked Plaintiff's Exhibit F, and ask you if that is a copy of the articles of the Philippine Sugar Estates Development Company, Limited?

A. Yes, sir.

Mr. KINNEY: I offer in evidence Plaintiff's exhibit F, as the articles of incorporation and the amendments thereto of the Philippine Sugar Estates Development Company, Limited.

There being no objection, it was admitted.

Q. Do these articles contain all the authority with which you are, or were, vested as agent or administrator general of the Philippine Sugar Estates Development Company, Limited?

A. Yes, sir.

Q. You have no authority to do any acts on behalf of the Company that are not contained in these articles?

A. That is correct.

Q. Are you a stockholder in the Philippine Sugar Estates Development Company, Limited, and if so, how many shares of stock do you own, and what is the par value of the stock?

Mr. ROHDE: I object to the question for the reason that it is immaterial, absolutely, how many shares of stock Mr. Gutierrez owns, or ever had owned.

Objection overruled, and exception taken.

A. I am a shareholder: I am the owner of 30,400 shares of the nominal value of $3,040,000.00 Mexican Currency.

Q. How long have you been the owner of that quantity of stock?

86 Mr. ROHDE: Objected to as immaterial absolutely.
Objection overruled, and exception taken.

A. Since January, 1902.

Q. The par value of these shares is $100.00, Mexican Currency, that is the nominal value, is it not?

A. Yes, sir.

Q. How much stock of the Company has been issued, and is now outstanding?

A. Four million two hundred and some odd thousand pesos.

Q. How long has that amount of stock been outstanding?

A. Ever since shortly after the organization of the Company.

Q. When was the Company organized?

A. In January, 1900.

Q. What is the total authorized capitalization of the Company?

A. Five million pesos, that is of the first series: of the second series, as many can be issued as desired.

Q. Did you enter into a contract with the Philippine Government for the sale of all or greater part of the lands of the *lands of the* Philippine Sugar Estates Development Company, Limited, to the Government?

A. The administrator general of the Company entered into a contract with the Government.

Q. Were you the administrator general who entered into that contract with the Philippine Government?

A. Yes, sir.

Q. By whom were you authorized to enter into that contract?

A. By the shareholders.

Q. When were you authorized by your shareholders to enter into that contract?

A. On the 21st of December, 1903.

Q. Did you receive from the Governor of the Philippine
87 Islands, on or about July 5th, 1903, an offer for the purchase of the lands of the Philippine Sugar Estates Development Company, Limited, by the Philippine Government?

A. Yes, sir.

Q. At what price did Governor Taft offer to buy these lands in that offer?

Mr. ROHDE: Objected to on the ground that it would not be the best evidence. It appears already of record that an offer was in writing.

Mr. KINNEY: I will withdraw the question.

Q. Is the paper I now hand you, marked Plaintiff's Exhibit B, a copy of the offer which you received from Governor Taft?

A. I suppose so, but as I do not know English, I cannot tell whether this is a copy or not.

Q. Have you the offer which you received?

A. I must have it.

Q. Was the offer which you received, in English or Spanish?

A. It was in English.

Mr. MARPLE: It is stipulated between counsel that Exhibit B, is a copy of the letter received by Mr. Gutierrez, and referred to by him in his testimony, and that it may be used in lieu of the letter received by him.

Q. Are the lands spoken of in that offer as Dominican lands the lands which are owned by the Philippine Sugar Estates Development Company, Limited?

A. Yes, they are the same.

Q. What was done with that offer, so far as the Philippine Sugar Estates Development Company was concerned?

A. It was rejected.

Q. Why was it rejected?

A. Because they did not offer even half the value of the
88 property.

Q. What reason have you to believe that the offer made was not half the value of the property?

A. I based my opinion on the knowledge which I had of the value of the haciendas: I mean to say of the haciendas under normal conditions.

Q. Have your duties as administrator general of the Philippine Sugar Estates Development Company enabled you to make such an investigation of the properties owned by the Company as to enable you to form a fair estimate of their value?

A. I had an opinion of the value of the haciendas before I was administrator general.

Q. In your opinion what were those haciendas worth?

A. Supposing that the Government had given the haciendas the protection which they ought to have received, they would have been worth six million dollars gold; but considering the abnormal condition in which they were on account of the failure of the Government to protect these haciendas, it is impossible to fix any value: they were worth nothing they were a charge.

Q. Were you aware, Mr. Gutierrez, prior to the 10th of October, 1903, that Mrs. Eleanor Erica Strong, was, or had been, the owner of eight hundred shares of stock of the Philippine Sugar Estates Development Company, Limited?

A. I knew in the year 1900, when she came for the shares, that she was the owner of the shares, but after that date she tried to sell them. I know this because they were offered to me for $15,000.00 Mexican Currency; and afterwards, in the general meeting of 1901, I saw she had already given up possession of the shares, I am not sure whether Mr. Wood had them or not, but he went to the
89 General Meeting to vote them; and afterwards, in 1902, Mr. Jones had part of them to the meeting as his. I supposed that she had lost the ownership of the shares, that she had transferred them.

Q. Do you know Mr. Gutierrez, where the shares that were issued to Eleanor Erica Strong at the time you speak of, now are?

A. No, sir, I do not know.

Q. When did you last see them?

A. When I sent them to Spain.

Q. When did you send them to Spain?

A. In October, 1903.

Q. How did you get possession of them?

A. By purchase.

Q. From whom did you purchase them, and at what price?

A. I bought them of Señor Kaufman.

Q. Is Señor Kaufman connected with you by marriage or otherwise?

A. He is not a relation of mine, but the wife of Señor Kaufman and my wife are sisters.

Q. How much did you pay Señor Kaufman for the shares?

A. 17,800 pesos, I think.

Q. Do you know where Señor Kaufman got the shares which he sold to you?

A. From Mr. Sloan.

Q. How, or in what manner, did you pay Señor Kaufman for these shares?

A. By a check.

Q. A check to whom?

A. Rueda Hermanos.

Q. What connection have you with the firm of Rueda Hermanos?

A. We are friends.

Q. Have you an interest in the business?

A. No, sir, none.

90 Q. Did you not have an interest in the business in October of last year and January of this year?

A. I have already said no.

Q. Did you not deliver that check to Mr. Kaufman to enable him to pay for the shares which he had contracted, through Mr. Sloan, to buy?

A. That is true.

Q. Then you knew, at the time that you bought the shares from Señor Kaufman, that he was buying the same through Mr. Sloan, and that the check that you gave him was for the purpose of closing up that purchase?

A. Yes, sir.

Q. How long before the date of that transaction did you know that Señor Kaufman was negotiating for the purchase of these shares?

A. Two or three months.

Q. What conversation had you had with Señor Kaufman on that subject prior to the day when the transaction was finally completed?

A. I had commissioned him to buy shares of my Company, nothing more.

Q. How long had he had that commission?

A. I can't say, but I suppose some two or three months.

Q. What shares did he buy for you under that commission?

A. Those of Mr. Sloan.

Mr. MARPLE: I object to the question and move that the answer be stricken out, on the ground that any transaction relating to other stock would be immaterial in this case: the question should be directed solely to this stock.

After some discussion, the objection was withdrawn.

Q. When did you first know that the shares which Mr. Sloan delivered to Mr. Kaufman, and Mr. Kaufman delivered to

91 you, were or had been the shares of Mrs. Eleanor Erica Strong?

A. When I saw them.

Q. Why was it, Mr. Gutierrez, that you desired to buy the stock of this Company at that particular time?

Mr. MARPLE: Objected to on the ground that the reason why he bought these shares are peculiarly personal to himself, and nobody else is possibly concerned in that.

After some discussion the objection was withdrawn.

A. I did not care to buy these shares at any particular time, I wanted to buy these shares in order to comply with a commission I had, and no date was fixed.

Q. To what commission do you refer?

A. It is already in the record, it is the commission I received from my brother.

Q. When did you receive the commission from your brother?

A. In November, 1902, when I was in Europe.

Q. Was that commission oral or in writing?
A. Oral.
Q. Was the price fixed at which you were to buy, or was it left to your discretion?
A. It was left to my discretion.
Q. Was the number of shares you were to buy fixed, or was that left to your discretion?
A. That was left to my discretion.
Q. How many shares of stock did you buy by reason of that commission?
A. The eight hundred shares that were offered me.
Q. The eight hundred shares which you received from Mr. Sloan, through Mr. Kaufman?
A. Yes, sir.

Q. Where does your brother reside?
92 A. In Spain.
Q. What place in Spain?

A. In the province of Santander, Caberon de la Sal; that is where he lived formerly. I don't know where he lives now he may have gone away. I am speaking of some months ago, when he was living there.
Q. What is his occupation?
A. He is a druggist.
Q. How long is it since your brother left the Philippine Islands?
A. In 1896, I think, I am not certain.
Q. Is it not a fact that you and your brother have considerable property in the Philippine Islands at the present time?
A. Yes, sir, not only this brother, but all the brothers.
Q. Is it not a fact that you are the representative of your father's estate, and that as such representative hold the property of all the heirs to that estate?
A. No, sir, I am not the representative of my brothers.
Q. Are you not the representative of your brother in Spain?
A. To all the property of my father, no.
Q. Is it not a fact, Mr. Gutierrez, that at the previous hearing of this case you stated, that you and your brother in Spain held your property in common, and that it was one and the same thing: that when you wanted money you received it from him, and that when he wanted money he received it from you?

Mr. MARPLE: Objected to as incompetent, and not the proper way to submit this question: what was stated before is here in the other record.
Mr. KINNEY: I withdraw the question for the present.

Q. By whom, Mr. Gutierrez, or in what manner, did you
93 send these shares to your brother in Spain?
A. By means of a friend.
Q. Who was this friend?
A. Don Claudio Argota.
Q. Did you take a receipt from him?
A. I took no receipt from him, as I also took no receipt from the seller of the shares, who afterwards denied the sale.

Q. Has your brother paid you for these shares?
A. Yes, sir.
Q. How much?
A. The value of 17,800 pesos.
Q. When did he pay you?
A. When he received the shares.
Q. When did he receive the shares?
A. In November.
Q. Did you actually receive the pay from him or did you charge it to his account?
A. I charged it to my account.
Q. When did you make that charge?
A. I did not charge it.
Q. Who made the entry? What means have you of knowing that your brother received that stock?
A. Because he wrote me acknowledging the receipt of them
Q. Have you the letter which you received, acknowledging the receipt of them?
A. I don't know whether I preserve- it.
Q. Who was Don Claudio Argota by whom you say you sent these shares to Spain?
A. He was a Spaniard and a friend of mine.
Q. What calling does he follow?
A. He is a priest.
Q. Do you know where he is now?
94 A. No, sir.
Q. Have you ever heard from him since he went to Spain?
A. No, I heard that he delivered the shares to my brother and nothing more.
Q. Mr. Gutierrez, is it not a fact that your office is closer to the office of Mr. F. Stuart Jones of Smith Bell & Company, than it is to the office of Messrs. Sloan & Mitchell?
A. Smith Bell & Company is right next-door to me, but I don't know where the office of Sloan & Mitchell is.
Q. Is it not a fact that your office is closer to the office of Smith Bell & Company or Mr. F. Stuart Jones, than it is to the place of business where Mr. Kaufman was employed at the time this stock transaction took place?
A. Very much nearer.
Q. If as you say, Mr. Gutierrez, you and your brother have common property in the Philippine Islands, why was it you sent this stock to him in Spain, instead of keeping it here in the Islands?
A. Because the property which we have in common is real propertty and these are bearer shares.
Q. This is the home office of the Philippine Sugar Estates Development Company, is it not?
A. Yes, sir.
Q. And the offices of the Company are here, are they not?
A. Yes, sir.
Q. What is the value in your opinion, Mr. Gutierrez, of the prop-

erty belonging to the Philippine Sugar Estates Development Company, which was reserved from the sale to the Government?

A. Sixty thousand dollars, gold, that is what I paid the Government for these properties.

95 Q. That is, that amount was deducted from the amount you otherwise would have received?

A. Yes, sir.

Q. What debts, if any, Mr. Gutierrez, did the Philippine Sugar Estates Development Company owe?

The WITNESS: I object to being asked these questions: as administrator I object to reveal the secrets of the Company, although as witness I am at the commands of the Court.

Mr. MARPLE: We object on the ground that the witness should not be compelled to reveal the affairs of the Company; everything that relates to, his own personal affairs is admissible.

Objection overruled, and Exception taken.

A. The books will show that.

Q. Do you know what the amount is?

A. No, sir.

Q. Do you know approximately?

A. No, sir.

Q. Do you know whether it is within $50,000?

A. No, sir.

Q. Within $100,000?

A. I don't know, the books will show, I can look into the books and under protest tell you.

Mr. MARPLE: I object to this.

The COURT: I will direct the witness to get information from the books, and have it here this afternoon: the approximate amount of the Company's debts.

Q. Has the Philippine Sugar Estates Development Company any property other than that which was sold to the Government, and the haciendas which you have said was reserved and the land which you said was reserved?

96 A. Is the question asked me as a witness or as administrator general: the witness knows nothing.

Q. We insist on an answer to the question.

A. A launch, nothing else, nothing more.

Q. Has your brother, Don Luis Gutierrez, in Spain, an interest in the 30,400 shares of stock that you have testified as belonging to you?

A. No, sir.

Q. Do you remember when the offer to sell Mrs. Strong's shares for $15,000 was made to you, the offer you referred to in your testimony a short while ago?

A. When she was a widow, immediately after the death of her husband.

Q. Do you know in what year; come as near as you can to the time?

A. The year in which he died, in, 1900, I think.

Q. Did the commission which your brother gave you in Spain, to which you have testified, authorize you to buy other stock than that in the Philippine Sugar Estates Development Company?

A. Yes, he placed no restriction upon the commission.

Q. In general terms what was that commission?

A. To buy shares of Companies which would yield a profit.

Q. Why was it, Mr. Gutierrez, if you were commissioned in 1902 to buy shares, that you did not make the effort to buy these shares until July, 1903?

A. Because I did not occupy myself with that matter until that time, and I did not think of it until that time.

Q. What caused you to think of it at the time you did: what brought it to your attention at that time?

A. Nothing.

Q. Mr. Gutierrez, when you were examined before in another branch of this case, you were asked the question by Mr. Marple: "I will ask you if the property left by your father has ever been divided among you and your brothers," and your answer was: "No, sir, we have not divided yet, I have all the titles." Is that answer correct?

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A. Yes sir.

Q. You were also asked by Mr. Marple: "And what relation then do you occupy of intimacy, or of a business nature with this brother, to whom these shares of stock went"? and your answer was: "That of "mancomun"; for what he has is mine and what I have is his." Is that answer correct?

A. That testimony: I want to say, when you asked me how it was that I received a commission from my brother to buy, verbally, and I had carried out the commission without requiring that the legal formalities be complied with, and you asked me whether I kept books, and all those things: I said, no, that amongst us brothers there exists an unlimited confidence and in referring to the "mancomunité" of the property, I referred in the first place to the real property which we have undivided, and the titles of which are still in the name of my father, and are in my possession.

Mr. KINNEY: I want to introduce in evidence the answer of the defendant to the order of the Court, to show cause why he should not have been in contempt, pages 35 and 36 of this record, filed January 14th, 1904, as Exhibit "H."

Mr. MARPLE: Objected to as incompetent, immaterial and irrelevant, not serving in any way to impeach this witness, or contradicting in any manner the testimony of the witness, and otherwise not being admissible, the witness being on the stand and subject to questions, and being the same thing in fact which the witness has already testified to: that when these shares of stock came into his possession on the 10th of October, he recognized them as those which the plaintiff formerly owned.

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After some discussion the objection was withdrawn.

Q. At the meeting of the shareholders at which the sale to the Government was ratified, did you vote your 30,400 shares of stock?

A. The contract has not yet been ratified.

Q. Did you not testify that on the 21st of December, you were authorized to sign this contract with the Government?

A. I was authorized to sign the contract which will be ratified in June, when they make the payment.

Q. Did you vote your stock at the meeting which authorized you to sign the contract?

A. Yes, sir.

Q. Was a meeting of the shareholders of the Company called to accept or reject the offer of the Government of July 5th?

A. It was called.

Q. In what manner was the meeting of the shareholders called?

Mr. MARPLE: Objected to as incompetent, immaterial and irrelevant.

Mr. KINNEY: I withdraw the question.

Q. Was that a regular or a special meeting?

A. All ordinary meetings are in February: all meetings outside of that are extraordinary meetings.

Q. Do you know when that meeting was called?

A. On the date which the estatutos provides.

Q. Was the offer of July 5th rejected at a meeting of the shareholders of the Company called for that purpose?

A. No.

Q. Then a meeting of the shareholders was not called for the purpose of accepting or rejecting the offer of July 5th?

99 A. No.

Q. Who rejected the offer?

A. I.

Q. In what capacity?

A. In my capacity as shareholder of the Company.

Q. Did you ever notify the other shareholders of the Company to the effect that this offer had been made?

A. I notified the Directors of the Company.

Q. But you did not notify the shareholders?

A. No, it was not my duty to notify the shareholders.

Q. Then you did not notify them?

A. I notified the Directors.

Q. I desire an answer, yes or no: did you notify the shareholders of the Company that you had this offer of July 5th, and were going to reject it, or that you had rejected it?

Mr. MARPLE: I object. I don't think the witness understands.

A. The Directors who are shareholders.

Q. Did you notify any other shareholders than those who were directors?

A. In order that I should notify the other shareholders, the Board of Directors would have to so order.

The COURT: Did you or did you not notify them?

A. No.

Mr. KINNEY: We ask that the witness be directed to bring here the minute-book of the Company, showing the minutes of the meet-

ing of December 21st, 1903, and also such other documents of the Company as his Counsel advises him are pertinent to this case.

The COURT: It may so be ordered.

100 RICHARD P. STRONG, called by the defense, out of order in order that he might be released from attendance in Court, testified as follows:

Mr. MARPLE: Dr. Strong, did you not in 1901 join your wife in the execution of a written power of attorney over her properties to Robert H. Wood and F. Stuart Jones?

A. I don't remember exactly, I have an indefinite recollection of signing some paper of that sort.

Q. Is your recollection so indistinct that it prevents you from remembering whether it was or not a power of attorney?

Mr. SUTRO: I submit if such a document is in existence it should be exhibited to the witness and he be given an opportunity to examine it.

Mr. MARPLE: I have no such paper.

Q. To what sort of paper does your recollection go, to your having signed along with Mrs. Strong, and which paper referred to Robert H. Wood and C. Stuart Jones, or either of them?

A. I have no recollection, I may have done so.

Q. Did you not a moment ago state that you had an indefinite recollection of signing some such sort of document?

A. Some such sort of paper, I am not sure whether I mixed it up with a paper I signed with Mr. Sutro in connection with my wife.

Q. In 1901?

A. No, but a long time since 1902.

Q. Do you remember going to a Notary's Office in 1901?

A. I have no recollection of it, I don't think I went, I may have done so, but I have no recollection of it.

Q. Have you not talked with your counsel, Mr. Sutro, in this case about it, and has he not shown you, a power of attorney, or a
101 copy of a power of attorney signed by you and Mr. Strong in June, 1901, before Mr. Barrera, the Notary here?

A. No, sir.

Q. You never discussed that with Mr. Sutro?

A. No, sir, not that I have any recollection of, I never signed that paper, certainly.

Q. Have you ever seen it, I mean in connection with the trial of this case?

A. No, sir.

Q. Have you ever discussed with Mr. Jones any power which you signed with Mrs. Strong?

A. I have not.

Q. To Mr. Wood and Mr. Jones?

A. I have no recollection of it.

Q. Ever?

A. No, the only recollection is, I may have seen one or two papers in connection with my wife's name, in connection with affairs of

hers, and I think that I did sign some such paper, but really the recollection is indefinite.

Q. You heard Mr. Jones testify here yesterday about a power executed in his absence to Mr. Wood and himself by Mrs. Strong?

A. I think I heard part of that testimony.

Q. Refresh your recollection in that way: will you say now that you did not sign with Mrs. Strong a power of attorney in 1901?

A. I cannot say it, I do not remember.

Q. To Mr. Robert H. Wood and F. Stuart Jones, over the properties of Mrs. Strong?

A. Well, I say I did not, I don't remember it.

Q. Then you might have signed it, so far as your memory goes?

A. If I had signed it I would not have known what was contained in it. I remember I was with Barrera at that time, looking
102 after affairs, and I remember everything was written in Spanish, and in those days I could not read a word of Spanish; but I think if there is a power of attorney, it would certainly show if I signed it and what it was.

Q. You are not in the habit of signing papers without asking what they contained, are you, as a business man?

A. I am not a business man.

Q. You don't sign papers without knowing what they contain? You would not sign a paper obligating yourself to be electrocuted, without knowing it, would you?

A. Not as bad as that.

Q. So that if you had signed a power of attorney with Mrs. Strong to Mr. Wood and Mr. Jones over her properties here in Manila, before a notary-public in 1901, you undoubtedly knew at the time what you were signing; is not that a fact?

A. It is probable I knew the substance of it: but I would have probably signed anything my lawyer, or my wife's lawyer, said it was proper to sign.

Q. Who were they; who was your wife's lawyer at that time?

A. I think Barrera was, I am not sure.

Q. You would not sign anything in relation to disposing of your wife's property to Mr. Jones at that time, would you?

A. Yes, I would have been apt to.

Q. Mr. Jones and Mr. Wood are Englishmen, are they not?

A. I think so, I am not sure whether Mr. Wood is a Scotchman or not.

Q. They are citizens of Great Britain?

A. I think so, yes sir.

Q. And Mrs. Strong is also English?

A. She is.

Q. And Mr. Jones, Mr. Wood and Mrs. Strong, from having lived in Manila for a long time, all speak Spanish, do they
103 not?

A. Yes, I think they do.

Q. The accounts of the transactions carried on with Mrs. Strong by Mr. Jones, how are they submitted?

A. What transactions?

Q. Any transactions that he does for her in the management and disposal of her property?

A. I don't quite understand.

Q. How does Mr. Jones submit, in what form, his statement of accounts with Mrs. Strong?

A. I am not sure that he ever gave her a statement of accounts. I believe she asked him about it once or twice, but I don't think he sent it in. I think he is waiting to make it with Mr. Wood. He has not sent it for over a year, I think, at least I have no recollection of it.

The Court then adjourned until 2 p. m.

Afternoon Session.

FRANCISCO GUTIERREZ REPIDE, recalled as an adverse witness by the Plaintiff, testified as follows:

Mr. KINNEY: What was the occupation of Mr. Kaufman, who conducted these negotiations for you at the time the negotiations took place?

A. An employee of the house of Kuenzle & Streiff.

Q. Kuenzle & Streiff are dealers in general merchandise, are they not?

A. I don't know them, I was never in their house.

Q. Is Mr. Kaufman a stockholder in the Philippine Sugar Estates Development Company?

A. No, so far as I know, he is not.

Q. Does he not appear in this minute-book (referring witness to minute book of the Company which he had brought by order
104 of the Court) as of September 3rd, 1903, as owning thirty thousand dollars' worth of stock, certificates 1623 to 1625 inclusive?

A. On what date?

Q. September 3rd, 1903.

A. No.

Q. On any date does he appear there as the owner of that?

A. He appears as a shareholder in August 1902, and in February, 1903: he voted my shares because I was in America, in 1902, and 1903 because I was sick.

Q. Did you communicate to Mr. Kaufman the offer of the Government of July 5th, 1903?

A. To Mr. Kaufman and to all those who spoke to me about the matter, I told it, commenting on that which appeared in the press.

Q. Will you turn to the minutes of your Company of December 21st, 1903, of the extraordinary meeting on that date?

A. Yes, sir.

Q. That is the book of the minutes of the Company, is it not?

A. Yes, sir.

Q. And the minutes that appear on pages 116 and part of 117 are minutes of the extraordinary general meeting of the shareholders, held on December 21st, 1903, are they not?

A. Yes, sir.

Q. Signed by you?
A. Yes, sir.
Q. Is that the meeting at which you were authorized to sign the contract with the Government?
A. Yes, sir.

Mr. KINNEY: We offer pages 116 and part of 117 of the minute book of the Philippine Sugar Estates Development Company in evidence, and ask that it may be marked Exhibit G., and Coun-
105 sel for the Defendant offers to make a certified copy which will be substituted for the original pages of the minute book.

Q. Was there any other meeting of the shareholders, ordinary or extraordinary, prior to the meeting of December 21st, 1903, at which you were authorized to negotiate with the Government for the sale of these lands?
A. No, sir, none.

Cross-examination:

Mr. MARPLE: Mr. Gutierrez, I believe you have stated that Exhibit F., the printed copy of the estatutos and amendments of the association, comprise the estatutos as they exist to-day. I will call your attention to the provision in Article 22 of Exhibit F., which says that the meeting of the stockholders shall be held in the first fifteen days of the month of August, and ask you if that provision has been amended since the publication of these articles.
A. While I was in America, at a general meeting of the shareholders in August, they amended the estatutos and postponed the meeting to February.
Q. So that the regular meeting of the shareholders of this Company, under the articles, for the year 1903, was required to be held when?
A. In February, 1903, the amendment took place August, 1902.
Q. The unissued stock of the Corporation in October, I mean the unissued stock of the five millions, about how much is there of that?
A. The same number as to-day, about $700,000.
Q. And what provision had the Corporation made, and was there then in force, governing the sale of these shares?
A. That they should be sold.
Q. Upon what terms, and by whom?
106 A. That I should sell them at par.
Q. Was it open or was it not open to you, in August and September then, to buy these $700,000 of shares, or any part of them, at the rate of 100 pesos a share?
A. I had a perfect right to buy them, the same right as anybody else.
Q. Referring to the Mr. Baldwin, named in article 13 of the Estatutos as having promised to subscribe for 2300 shares of the Company, I will ask you to state whether or not Mr. Baldwin did complete such subscription?
A. No, sir, he did not want them. I asked him during the month of September to comply with the articles of incorporation and com-

ply with his promise, and he would not do it, but stated that the conditions of the Company did not warrant him taking the shares, and he asked to be relieved from his promise, and on the 4th of September he was relieved by the Company from complying with the articles.

Q. The Richard Henry Andrews referred to in the article, in article 1 and other articles of the Estatutos of this corporation, was he the husband at that time of the plaintiff in this suit, Mrs. Strong?

A. Yes, sir.

Q. Article 6 of this estatutos provide- that this gentleman, Mr. Andrews, should exercise the general agency of the company until the meeting of the stockholders in 1905: when did Mr. Andrews cease to discharge the duties of this office?

A. He performed them until he died, in August or September, 1900.

Q. And who succeeded him?

A. Don Baldomero Hazañas provisionally.

Q. And who then permanently?

A. In 1901, I think in the month of August, I was elected.

Q. Mr. Gutierrez, what answer did you make, or what con-
107 versation did you have with Governor Taft over that offer of July 5th, 1903?

A. In the month of August or September, I don't remember just when, I went to his office, and I told him that the classification which had been made by the expert appraiser of the haciendas of my Company, was an outrageous valuation, which I rejected absolutely, and I of course rejected the offer, as I had continuously done in the many discussions we had at the Malacañan. The Government exacted from me a tax at the valuation of $150, gold, a hectare, and offered to buy off me at $60 Mexican Currency; and I told him: "If you value my lands at $150 gold, for the purpose of taxation, then you ought at least to pay me $150 gold."

Q. And what did Governor Taft say?

A. He told me that up to that time he had desired to purchase the lands, because he had thought in that event the Friars would leave the Philippine Islands, but since the Friars would not go, he did not want to purchase the land: and I said to the Governor: "Governor, good luck, you don't want to buy and I don't want to sell, Good Day sir." After that I did not speak to Governor Taft again about the haciendas until the 7th of December. Then he complained of the fact that I had not gone to the receptions at the Malacañan; that he had always give*n* me an invitation and that I had never accepted. I told him I would promise him to go to the next, and I went, but we did not again talk about the matter of the haciendas until the 4th of October about an incidental matter. At the first reception in October 1903, on entering the reception, Mr. Taft saluted me and tried to talk in English. I told him "Mr.
108 Taft, I do not understand English." Then he turned round and called a person, and I found it was Señor Bertrand de Lis, and he began to speak in English to that gentleman. And Mr. Bertrand de Lis said to me: "Mr. Taft says that he hopes this night

will be more auspicious for you than the 4th of October was." I did not quite understand that, because I did not think that night has been inauspicious for me; and then I remembered that he was referring to the 4th of September, when the Municipality of Naic rode over all the rights of the Company, and took forcible possession of the houses and warehouses of the hacienda. After that we did not speak any more about the business. Governor Taft kept on talking to Mr. Bertrand de Lis, and Mr. Bertrand de Lis told me that he had said to Governor Taft: "I see you are beginning to attract Mr. Gutierrez," and the Governor had said: "No, it is impossible to do anything with him, he is very hard." Then we did not speak any further until the 7th of December.

Q. Now then, did you regard after this meeting with Governor Taft that the offer of July 5th, 1903, was still pending or had been withdrawn?

A. Well, in that case we did not occupy ourselves with the affair any more.

Q. When did you next consider the proposition of selling these lands to the Government?

A. I began to consider that matter again about the middle of November, by reason of the visits which Mr. McGregor had made me, requesting me urgently that I should find some means that the sale should be consummated, because otherwise nothing would be done.

Q. Well, state now, from the commencement all that you did with Mr. McGregor from this time?

A. Nothing at all. I think it was in the month of October
109 that Mr. McGregor came to the office to tell me that he had made a reduction of 40 per cent. upon his offer made to the Governor, and that Governor Taft had told him that he would speak to the Commission to see if they would accept the offer made by Mr. McGregor. This was about the latter part of October, I think, I cannot state exactly. Then after a few days he came again, and stated that they had rejected his proposition entirely, and that the Commission had decided they would not buy unless they bought all the lands, and stated that I should make the same reduction as the others so that the sale could go through. I told him that in no manner.—. Then he came to me afterwards, at some interval, and told me that it was insanity for me not to sell, for if we did not sell, we would not be able to work the ground, and that the tenants would kill both me and him. I told him that that would make no difference, that my life and his life counted but very little to the Companies, that if they killed us there were plenty of others to take our places. The gentleman came back one day in the begin-ing of November, and implored me with much insistence, and in a session lasting two hours painted the situation in such dark colors, and the situation of the other companies, that in a moment of weakness and pity for him I told him: "You know that the valuation of the haciendas of the Philippine Sugar Estates Development Company, has been much worse than yours, and you know that Governor Taft has told me, through Mr. Macleod, interpreter, that the haciendas

of my Company were worth at least one third more than all the others together; so that in order that the sale may take place, to please you, if the other companies agree to value the haciendas
110 of Mindoro and Isabela as their uncultivated lands, that is as they value the uncultivated haciendas of ours which are at a distance of 18 miles from Manila, and give me the difference between the five pesos at which they have now valued our haciendas and the 15 to 25 pesos at which they have valued your haciendas, and give that to my Company, then we can treat with Mr. Taft." I told him "You know that the haciendas of Mindoro and Isabela are of no value at all and are a burden for the owners, because you know they have to pay taxes and cannot collect anything; so that if they will agree to that, we can go and see Mr. Taft." I believe he went to see the Apostolic Delegate and the other persons of the other companies, and spoke to them about the matter. Then the Apostolic Delegate sent his page to me and asked me to go and see him. He asked me if what Mr. McGregor had told him was the truth, and I told him, yes: but that even in case the others accepted my proposition I would not bind myself that the sale would take place, because I had still other business to urge beforehand with Mr. Taft. Then the Apostolic Delegate told me that since Padre Juan Martyns was not here to represent the Compañia Agricola de Ultramar, he could do nothing, and that the same day he would telegraph him in Shanghai, that he should come and see if he would accept or not. They telegraphed to him, and during the last days of November or the first of December he came and accepted my proposition. Then on the 7th day of December I went to see Governor Taft, and stated to him, that if he would leave me 1000 hectares of land and all the houses and warehouses of the Company, I would then concede
111 the sale with an increase of three millions on the original offer, which was to be divided among the four in proportion to the capital stock of each. Then Mr. Taft, after very much discussion, said: "Well, well, all right; call a general meeting of the stockholders so that they may determine whether the sale should take place." I told him that I would not call the general meeting because there were still these differences. I said: "I will not call a meeting of the shareholders because you say you are going to mark out the thousand hectares which I will take, and choose the location. I can mark them out much better than you can, because I know the land." Then he said to me: "Go ahead and call the meeting and we will arrange it." And the same day I called the general meeting of the stockholders for the 21st, of December; and from the 7th until the 16th of December I continuously held conferences with Governor Taft, because he told me that my retaining of the one thousand hectares and the houses killed the moral effect of the purchase of the land, which the Government had desired to produce thereby. Since I refused absolutely to settle on that basis, he asked me on the morning of the 16th, on leaving, to come back in the afternoon, in order that we should go on with the negotiations. I came back in the afternoon of the same day, and he immediately rang a bell, and the gentlemen of the Civil Commission came in,

and Mr. Taft said to me: "You tell me that what I do is done and that the Civil Commission has nothing to do in this matter," and in truth I had told him that very often. Then he said "That you may be convinced, look at these gentlemen, and see how they oppose this sale." Then he kept silent, and all the members of the Commission started in against me, telling me that if I did not sell the
112 company could not make any profits; that the Government could not assist me; that the same thing would occur that is occurring in Ireland, and that they would not let me have the one thousand hectares, because it would have a very bad effect. Then I discussed the matter until half past 6 with all the members of the Commission, except Mr. Taft, who was silent, and did not say anything. Then Governor Taft said: "Come back in the morning, Mr. Gutierrez, think this matter over in the night, and come back again in the morning and see if we can't arrange it: sleep over it." I said before them all: "Tomorrow at 10 o'clock I will come for the pleasure of meeting you, but I will not change." I then bade them good-by and went away, and the following day, the 17th, I went at 10 o'clock in the morning. Mr. Taft rang the bell and the Commission was called. I said "Mr. Taft, why do you call the Commission to discuss with me?" He said: "Yes." I said: "No, if the Commission comes there will be no sale. If you want to discuss it, let us discuss it, you and I, because such and such a gentleman and such and such other gentlemen are not courteous and well-behaved with me, and I won't discuss it with them." All the Commission were there: then Mr. Taft got up and talked in English, and the Commission went out. Then Governor Taft said to me: "Mr. Gutierrez, you and I cannot live in this nervous strain, we will become sick, let us arrange this matter." Then at last in a weak moment I said I would accede, we shook hands, he thanked me, and wanted to make an engagement to dine in Washington, and the negotiations were closed.

Q. Now, Mr. Gutierrez, have you described the entire intervention that Mr. McGregor had in these negotiations, so far as you
113 or the Philippine Sugar Estates Development Company was concerned?

A. Yes, sir.

Q. What was your honest belief on October 10th, 1903, as to whether or not the Government would acquire the lands of the Philippine Sugar Estates Development Company?

A. I had rejected the idea entirely, and dedicated myself entirely to trying to get the tenants to pay their rent, and to getting the haciendas in profitable working condition, and for that reason I tried to push all the suits pending at that time.

Q. And had you been of this same belief during the month of September?

Mr. KINNEY: Objected to as immaterial and irrelevant.

After some discussion, the objection was withdrawn.

A. Always, yes, sir.

Q. Mr. Gutierrez, apart from the concessions which you obtained

over and above the offer of July 5th, 1903, what, if anything, else caused you to consent to the sale of these lands?

A. The Company did not receive any protection from the Government.

Q. And what was the condition of the law suits, what happened, if anything, with the law suits?

A. The Judges were very busy when it came to the Philippine Sugar Estates Development Company cases, but with the others they were not so busy.

Q. And what results did you obtain generally in those cases which the Judges had time to consider?

A. Nothing at all, some of the cases were heard, we had a trial but we never reached sentences.

114 Q. Now did you not run up against some sentences which were not altogether satisfactory?

A. Yes, we had one or two that were adverse.

Q. And what was the condition of the haciendas with regard to the attitude of the tenants, what proceeds was the Company receiving?

A. They never received any income, the tenants called themselves the owners, and the tenants who were disposed to pay, were imprisoned by the municipal authorities.

Q. What was the reason for this, given by the people?

A. The most of them for fear of the pressure brought upon them by the authorities, and some American authorities too, the Military. Some of the tenants called themselves owners: the leaders of the disturbances on the haciendas always called themselves the owners.

Q. What dividends, Mr. Gutierrez, has the Philippine Sugar Estates Development Company paid since its organization?

A. None at all, there had been deficits, the Company lived on its credit.

Q. Had the Company paid taxes, during American occupation, upon these lands?

A. No, sir. How was the Company going to pay taxes, it did not have anything and could not pay. I told the Treasurer to attach the lands.

Q. For how many years, in August, September and October, 1903, did the Company owe for taxation?

A. They owed it from the time the taxes were imposed, I don't know what year.

Q. Apart from your participation in these negotiations with the Governor, what had you done in behalf of the Company, in its management: I refer especially to your visit to America?

115 A. I went to America to obtain the protection of the Government and to sue for some rent there.

Q. Was it your desire and aim at that time to promote the sale of these lands, or to work them for the purpose for which the Company was incorporated?

A. My hope always was not to sell, and for that reason we contracted with the firm of Coudert Brothers, in New York and Washington, that they should do everything in their power to prevent the Government from realizing the project which it had for buying the lands.

Q. Mr. Gutierrez, this brother for whom you purchased this stock, how long had he been in the Philippine Islands?

A. All his life, he was born here.

Q. How old is he?

A. 38 years old.

Q. The shares of stock of this Company that were voted at the meeting of the stockholders at the last meeting of the stockholders held in December, state whether or not among those shares voted at that time, were the eight hundred shares referred to in this suit?

A. No, sir, they were not included.

Q. State whether or not at the time of this meeting any claim had been made upon you for the return of these shares?

A. No, sir, I don't think they were trying to get the shares back until the 9th day of January.

Q. And these eight hundred shares that are in the controversy here, are they or are they not a part of the 30,400 shares which you own?

A. No, sir.

Q. Your attention has been directed to an answer in the English language, which is in my handwriting and signed by you.
116 which was presented in the contempt proceedings heretofore had in this case. In this English document it is stated, that you admitted that on or about the 10th of October, 1903, you knew, or thought you knew, that is to say believed that the shares in action were the property of the said plaintiff, Eleanor Erica Strong: what if any explanation do you wish to make about this?

A. In those days they did not give time for anything, and I did not understand English and Mr. Marple does not understand Spanish very well, and we must not have understood each other; for it was the 10th of October that I bought these shares: then it must have been because I saw them. Plain it is that when I saw the certificates of stock that I saw of what origin they were, and who had been the owner originally.

Q. And in these same contempt proceedings, is it not a fact that you gave oral testimony in the Court, in these contempt proceedings, upon the same day that this answer, to which I have just called your attention, was filed, that is to say January 14th, 1904?

A. Yes, sir.

Q. And did you not on that same day, the 14th of January, in this Court, testify in answer to the question from Mr. Kinney with regard to these shares, as follows: "I know that at the time of the death of Mr. Andrews his widow presented to the Company his will, by which she was constituted as the heir of all his estate and she came over there to get the shares, and the shares were delivered to her and she signed the book because this was the first time that those shares were issued or left the office, because, I repeat again,
117 when these shares are handed over to any persons there is entered in the book who are the persons who took them away but afterwards we do not know who buys them. Those were the same shares that belonged to the widow of Mr. Andrews but I do not know whether she sold them to some other person or disposed of

them, because since her husband died she was looking for a purchaser of these shares; they belonged at one time to her, but I did not know at the time I bought them that they belonged to her because after her husband died she was looking for some one who might buy those shares from her." Is that correct?

A. Yes, sir.

Q. Mr. Gutierrez, were you on at all intimate terms with the Plaintiffs in this suit?

A. I knew Mrs. Strong the day she came to the office, but Mr. Strong I have not seen until yesterday, when he came here.

Q. What day was it that Mrs. Strong came to the office, and what office do you refer to?

A. The office of the Philippine Sugar Estate- Development Company, in 1900, I don't know the exact date.

Q. State whether or not from that time to the commencement of this suit you have talked on any occasions with either Mrs. Strong or Dr. Strong?

A. No, sir.

Q. And over the occupation of Mr. Kaufman, what relation in a business way have you had with him? Why did you speak to him about buying this stock?

A. Because he was always with me, he lived in front of my house.

Q. Well, what, if any other, transaction, has he been employed in for you?

A. In no employment of mine, except voting my shares at
118 the meeting, and this transaction was among other purchases he had made for me, matters of small importance.

Redirect examination:

Mr. SUTRO: Have you the statement of the total liabilities of the Company?

A. What month?

Q. What does the Company owe to-day?

A. Fifty-seven thousand and some odd dollars, Mexican Currency.

Mr. MARPLE: That is exclusive of the land taxes?

A. Yes, sir.

Q. And the tax is one per cent. per year?

A. No, I believe two per cent; there are debts which do not appear there in this statement (referring to book which Mr. Sutro was examining).

Q. What?

A. Court costs, attorneys' fees, and claims of that kind.

Mr. KINNEY: How much would they amount to at the outside?

A. It may exceed 200,000 pesos; when dealing with attorneys, it is difficult to say how much it is going to cost you.

Q. Have you ever made a calculation to find out about what dividend per share will be paid to the stockholders on the price that the property has been sold to the Government?

A. No, I have not given myself that labor, because the matter is so remote that I have not done that.

Recross-examination:

Mr. MARPLE: What will be done with this money if the sale does go through: purchase other haciendas?

Mr. KINNEY: Objected to as slightly suggestive, the last part of the question.

119 Mr. MARPLE: Well, strike out that last part.

Mr. KINNEY: Objected to, because he has no right to say: it is a matter for the Company to determine.

Mr. MARPLE: I will withdraw the question.

Q. Showing you document marked Defendant's Exhibit One, I will ask you if you remember Mr. McGregor exhibiting this document to you during the latter part of October or the early part of November?

A. He showed that to me in the first days of November.

Q. And what, if any, answer did you make to the proposition which Mr. McGregor was advocating?

A. Nothing, I rejected them; not until, that afternoon in the month of November when he talked to me in that imploring way and stated that if I did not sell the others could not sell, and that we would lose everything.

Mr. MARPLE: I will offer in evidence the document just referred to, and ask that it be marked Defendant's Exhibit One: It is as follows:

Valuations of Haciendas.

Sugar Estates, Reduction of 40%	$5,600,000	
Compañia Agricola " " "	3,000,000	Asked $8,500,000
British-Manila " " "	1,200,000	
Mindoro Estate " " "	420,000	
	$8,220,000	

Government makes counter offer of $7,250,000 which divided proportionately is:

Sugar Estates	$3,175,182	
Compañia Agricola	$2,645,985	
British-Manila	$1,058,394	$970,000 less than the 40%
Mindoro Estate	$370,439	reduction amount
	$7,250,000	

120 I propose to sound the Governor with the suggestion that the owners might be persuaded to reduce to eight millions, and if I see this would be useless, propose to make a counter offer of 45% reduction, or say $7,535,000.

Sugar Estates	$3,503,649	$3,300,000
Compañia Agricola	2,901,708	2,750,000
British-Manila	1,167,883	1,100,000
Mindoro Estate	408,760	385,000
	$8,000,000	$7,535,000

If possible I shall try to get him to split the difference, and make it $7,767,500.

Sugar Estates	$3,401,824
Compañia Agricola	2,834,854
British-Manila	1,133,941
Mindoro Estate	396,879
	$7,767,500

Mr. KINNEY: The Plaintiff rests.

Defense.

ALVARO BERTRAN DE LIS, witness for the defense, being duly sworn, testified as follows:

Mr. ROHDE: State your name and address?
A. Alvaro Bertran de Lis y Guaret, Manila.
Q. What is your occupation?
A. General Broker and Commission Agent.
Q. How long have you lived in the Philippine Islands?
A. About eight years.
Q. Are you still a subject of Spain?
A. Yes, sir, of Alfonso XIII.
121 Q. And you, of course, know well both Spanish and English?
A. Yes, well.
Q. Are you acquainted generally in Manila?
A. Pretty well acquainted, pretty well known.
Q. Do you know the members of the Commission?
A. Some of them.
Q. Do you know Dr. Strong?
A. I have met him several times.
Q. Do you know the Judge and the lawyers in this Court room?
A. Every one of them.
Q. Have you heard the question of the Friar lands discussed in Manila: the purchase by the Government of the Friar lands, for the past year or so?
A. For a very long time, I can't say whether twenty-three months or two years. It has been a public topic ever since Governor Taft left Rome, and especially so when Monsignor Guidi came here. After that everyone knew that there were negotiations going on, and that the Friars wanted an enormous sum for their lands, the papers were full of it, and at every private gathering it was talked about, as well as in the Clubs, and everywhere else.

Q. Are you able to state whether or not in the year 1903, the proposition of the purchase by the Government of the Friar Lands was in Manila a topic of general conversation?

A. Quite public, yes.

Q. And what would you say as to the general idea as to the price the Government was willing to pay for these lands?

Mr. KINNEY: Objected to.

Mr. ROHDE: Question withdrawn.

Q. State whether it was generally stated publicly in Manila during 1903, what the Government was willing to pay for these
122 lands?

A. I heard many many months ago, right at the beginning of the negotiations, that the Friars asked ten or twelve millions for the lands and were only offered five millions. I heard that many many months ago. I never had much interest in the question, and never followed it closely. Afterwards I heard *form* time to time something about the negotiations: that they had broken down and were afterwards renewed, but I never took any interest in the question, directly or indirectly: I was not rich enough to be a broker in the business, and did not take any interest in the thing at all.

Q. Was this statement as to prices known and read by you as early as: how early did you learn of that: as early as June or July, 1903?

A. It is difficult to state the exact date, because I took no interest in it and do not retain these things in mind; but the price you can get, that I am certain, if you look up the newspapers, and I knew it a good deal before the newspapers knew it.

FRANCISCO GUTIERREZ REPIDE, recalled by the Defense, testified as follows:

Mr. ROHDE: I hand you a letter and card, will you say what they are?

A. The latter is dated November 26th, 1903, the Apostolic Delegate wrote it; and the card is also from him, from Monsignor Guidi, of the 4th of December, not of November as put on this card. He put November on the card but he meant December.

Q. How can you tell he meant to say November?

A. Because the card refers to a letter of November 26th.

123 Q. For what purpose was this letter and card sent to you by Monsignor Guidi; in reference to what matter?

A. In the latter part of November I was not well, and I was tired of the constant importunities which they were bothering me with about the sale of the haciendas, and I had it in mind to go to Australia. I was sick, and Monsignor Guidi urgently requested me not to go, so that the negotiations for the sale could go on, and in this letter he tells me that at any moment Padre Juan Martyn might arrive.

Mr. ROHDE: I now offer in evidence the card and letter just identified by the witness, as *res gestæ* and directly bearing upon the matter in question, as the correspondence between the Apostolic

Delegate and Señor Gutierrez in relation to the same subject matter as that testified to by Mr. McGregor, and ask that they be marked Defendant's Exhibit 2 and 3 respectively.

No objection being made, they were admitted.

Mr. MARPLE: I would like to have the record show that Mr. Kaufman, who was subpenaed in the present cause at the instance of the Plaintiff, and reported not to be within the jurisdiction of the Court by the Sheriff and therefore not served with the subpena, presented himself here this morning at the disposal of the Plaintiffs.

Mr. KINNEY: Objected to as immaterial.

Objection sustained, and exception noted.

Mr. MARPLE: We now offer in evidence, as Defendant's Exhibit 4, a paragraph in the second column of the editorial page of the Manila Times of Thursday, September 24th, 1903, as follows:

"It is reported that the Friars have offered their lands at $12,000,000, and the Government has offered half that amount. In Maine this would be equivalent to a trade."

124 Mr. KINNEY: Objected to as immaterial, not brought home to, the defendant, and if it is it does not shield the defendant of the obligation he was under to communicate the facts known to him to Mrs. Strong.

Mr. ROHDE: It is admitted that the exhibit offered is the "Manila Times of the date of September 24th, 1903, and that this paper is an afternoon publication in general circulation in the city of Manila.

The COURT: It may be admitted.

Mr. KINNEY: Exception.

Mr. MARPLE: We ask leave to offer a number of extracts from the Manila American and the Cable News, later on, subject to the same objections on the part of Counsel for the Plaintiff, the same ruling by the Court and the same exceptions.

Later on the following exhibits were handed in, to be made a part of the Record in this case.

EXHIBIT 5.

Extract from Cable News of August 24th, 1902.

* * * "Governor Taft's response to the address of welcome on Friday was a sound and masterful summary of the present situation in the Philippines. Special emphasis should be laid on several points, and his position on this question will be taken as a standard by both Americans and Filipinos.

* * * Governor Taft has won for the Filipino race a victory in the question of the Friar lands, and that question seems to have become a thing of the past. Every Filipino should bear in mind that no padre will be appointed in the future who is not thoroughly acceptable to a majority of the people among whom he has to live and work."

125 EXHIBIT 6.

Extract from Cable News of September 9th, 1902.

(From Dr. Albert's Speech.)

* * * "Although the Friar question has not reached the point of final settlement, to Judge Taft belongs the glory of having presented a legal solution of the matter in every way harmonizing with the most just aspirations of the Filipino people. To him also belongs the glory of having succeeded in getting the Government of Washington to become solidary with this solution, and the Vatican to accept it *in principio*. Hence the question entrusted now to the two competent powers is at the period that is known as the begin-ing of the end, since the right of the Filipinos in Washington and Rome is wholly recognized. The long political history of the Philippines records no greater success in the settlement of this question."

EXHIBIT 7.

Extract from the Cable News of October 6th, 1902.

Head Line: "Vatican May Accept Terms for the Purchase of the Friar Lands."

* * * "After a thorough investigation into the question of the disposition of the Friar Lands in the Philippine Islands, the War Department has come to the conclusion that it will require three years to properly adjust this complicated problem, and that if the purchase is finally made the Friars will be the principal sufferers. It is believed that when the Vatican is apprized of that fact, that the Philippine Government will assume all risks in the way of defective titles, the terms offered by the United States for the payment of the lands in a lump sum will be readily accepted. It is understood that further reports will be made to the Vatican, which will
126 result in a speedy adjustment of the matter."

EXHIBIT 8.

Extract from the Cable News of October 7th, 1902.

Head Line: "Friar Titles to Property Now Being Investigated in Manila to Facilitate Transfer of Lands to the Philippine Government when Final Agreement is Reached."

EXHIBIT 9.

Extract from the Cable News of October 7th, 1902.

(From the Editorial.)

Head Line: "The Friar Landlord and Spiritual Adviser."

* * * "The Government owes this debt to the Filipino people and it proposes to pay it in its usual manner of frankness and

fairness to all, by giving a just compensation for every acre of land to the Friars, and in doing so relieve for ever the native race from what they believe to have been a most iniquitous alliance of God and Mammon."

EXHIBIT 10.

Extract from the Cable News of October 14th, 1902.

(From the Editorial.)

* * * "There are three bond provisions in the bill: First, authority is given to the Philippine Government to borrow money for the purchase of the lands belonging to the religious corporations."

EXHIBIT 11.

Extract from the Cable News of October 21st, 1902.

(Telegram from London.)

"Monsignor Guidi, Apostolic Delegate to the Philippines, will start for Manila to-day. He will sail from Marseilles. Negotiations with the Philippine Government over the Friar Lands
127 must thus be postponed until December."

EXHIBIT 12.

Extract from the Manila American of August 22nd, 1902.

(From the Editorial.)

Head Line: "The Friar Campaign at Home."

* * * "The campaign of the assistants of the Friars, who were located back of the States, did not last long, nor did it amount to much. Archbishop Ireland and two or three other influential Catholic journals gave it its quietus. If those good Catholics back there had known the true situation over here, they would not have placed themselves in such a ridiculous attitude. There never has been any idea of expelling the Friars. It has always been the purpose to induce them to give by purchase their lands. They can get no other buyer. They cannot work them profitably nor can they safely return to their parishes, for that would invite assassination. Thus, looking at the matter from all sides it can be seen that it is a matter of business for all concerned. The United States can more easily govern the country, if the disturbing element is withdrawn, and like any other wise old trader, Uncle Sam has counted the cost and is willing to pay it. That is all.

EXHIBIT 13.

Extract from the Manila American of August 23rd, 1902.

(From the Editorial.)

Head Line: "A very Remarkable Speech."

* * * "The speech made yesterday by Governor Taft was a very remarkable one. It was optimistic, as are all of his utterances, public and private, but it was candid to the uttermost degree, and he who reads it will know more about the actual and potential situation in the Philippines than do the people of the United States
128 until it is cabled back to them. * * * The most interesting part of his speech, however, was that devoted to telling his experiences at Rome, and the result thereof. It will be observed that the Pope has agreed to recall all the Friars. As rapidly as possible the parishes where there are now no priests will be supplied with secular rectors who are not Spaniards, and a majority of whom will be drawn from America. The money to be paid for the estates of the Friars will not go to the religious orders but will become a fund of the Roman Catholic Church of the Philippines. * * * "Without disparaging anything else that Governor Taft has accomplished, in the opinion of the American, this Vatican negotiation is the most brilliant and most useful work that he has ever done or ever can do. It is the practical settlement of a question that has been in bitter issue for many years, and which has cost the lives of thousands of Filipinos."

EXHIBIT 14.

Extract from the Manila American of August 23rd, 1902.

Head Line: "Governor Taft Right Royally Welcomed."

* * * "After an audience with the Pope, the instructions were referred to a committee of Cardinals, and an answer was given him (Taft) agreeing generally with all the purposes stated in the instructions, which included among other things the purchase of the Friar Lands by the Government. This answer proposed that further negotiations be had between the Apostolic Delegate and myself (Taft) in Manila. With the hope of having less to do in Manila, and by authority of the Secretary, I replied by suggesting to the Pope the offer of a contract to be signed in Rome, submitting
129 the questions at issue to a Tribunal of Arbitration, to consist of two members appointed by the Pope, two by this Government, and the 5th to be appointed by the Viceroy of India. The questions were first: the price to be paid for the Friar Lands; second, the price to be paid for the occupation of the Friar Churches and Convents by American troops; and third, the disposition of educational and charitable trusts, including the San José College case.

The contract included a covenant that the members of the four great religious orders, who were all Spaniards, should leave the Islands in two years after the first payment was made for the lands, and that only secular priests, or non-Spanish members of the regular clergy, should act as parish priests. The Vatican agreed to sign such a contract, excepting the last covenant, which he declined to sign; first, because it related to the administration of religious matters not the proper subject of a commercial contract; second, because by signing such a covenant it would give just offense to Spain, whose subjects these Friars were and as such were entitled to remain in the Islands, under the Treaty of Paris; and because the Vatican did not wish to give countenance to what were regarded as exaggerated charges against them. Instead of this however, the Pope said, through Cardinal Rampolla, that he intended to reorganize the Church in the Islands, to recall the Friars now in the Islands from political intermeddling, to the institutes of their order, to provide ecclesiastical education to the natives, so that the priesthood should ultimately be entirely native, and now to introduce priests of other nationality than Spanish chiefly from the United States, into
130 the Islands. He said that the money for the lands would go to the Church for the benefit of the Church in the Philippines, and not to the orders; and he finally reiterated what had been said earlier in the correspondence that no priest would be sent to any parish in the Islands, whom a majority of the natives of the parish did not wish to receive."

EXHIBIT 15.

Extract from the Manila American of September 21st, 1902.

Head Line: Land Deals Alleged. Queer Rumors Concerning the Friar Lands are Persistently Circulated in the United States."

* * * "It is estimated that if the lands should be purchased by the Government for the sum of $7,000,000 which was offered." * * *

EXHIBIT 16.

Extract from the Manila American of November 18th, 1902.

Head Line: "Papal Delegate Guidi Arrived Last Night."

* * * "Delegate Guidi arrived in Manila last evening on the British steamer Lalpoora, but too late to come ashore." * * * "There has been nothing decided upon as yet as to the conference to be held regarding the Friar Lands. Monsignor Guidi is expected to take up his residence at the Bishop's Palace here in Manila."

EXHIBIT 17.

Extract from the Manila American of August 15th, 1903.

* * * "Secretary Ferguson sent the following communication to the Editor of the Libertas yesterday: "In view of the fact that too much importance has been attached to a cablegram to
131 your paper, in which it is stated that the Philippine Government intended to take severe measures in regard to compulsory appropriation of the Friar Lands, I am directed by the Civil Governor to inform you that the statement is incorrect, as the Civil Commission never intended nor expect to have recourse to such strict measures in regard to the purchase of said lands. If the Government cannot acquire the lands in question on an amicable basis, the Government would prefer to relinquish any offer to purchase."

I certify that the above is a correct transcript of the testimony taken in the above entitled cause of Eleanor Erica Strong *vs.* Francisco Gutierrez, Civil Case No. 2365, on the 18th and 19th day of April, 1904.

Manila, P. I., April 28th, 1904.

W. M. BARRINGTON,
Official Stenographer.

Presentado el anterior escrito hoy 9 de Mayo de 1904, á las ——
J. McMICKING, *Escribano.*

132 PLAINTIFF'S EXHIBIT "A."

In Manila on the 18th day of April, 1901, Before me, Don Enrique Barrera y Caldes, doctor of civil and canonical law and notary public of the City of Manila, and residing therein, appear: Señora Doña Eleanor Erica Andrews, widow of Don Ricardo S. Andrews, occupied with the duties usual to her sex, of full age and resident at the capital, with personal cedula or certificate of inscription No. 1,045,823, issued for the current year.

And possessing in my opinion, the capacity necessary for the execution of this writing, without anything to the contrary appearing to me, freely and voluntarily makes known and grants:

That she confers special powers, but as ample and sufficient as may be necessary and required upon Don Francisco Stuart Jones, merchant, of full age, bachelor and residing in this capital, for the purpose that he may in the name and representation of her, and in the use of her rights and rights of action, demand, recover and receive all sums and amounts of money, values or interests of whatsoever nature, which to her belong and are owing to her by any person or persons, corporation or partnership, by virtue of any document, right or right of action, and that to this end he may take such steps judicial or extrajudicial as may be necessary, and

execute for the things by him collected and received, the necessary receipts, acquittances and other documents.

For the purpose of the matter set forth and matters incidental thereto, she confers upon the said Don Francisco Stuart Jones the most and ample and valid powers which may be necessary, thereto, freely and without limitation, and with express power of substitution in favor of whom she may see fit; to revoke substitution and make new substitution, promising to hold as subsisting and valid whatever in virtue hereof he may do, under the most solemn obligation according to law.

133 Thus she says and grants in the presence of the witnesses to this instrument Don Claudio del Rosario y Espiritu y Don Tomas Pilar y Pimentel, both clerks of full age and residents of this capital, and this document having been read by all present in the exercise of the right conceded by law, the lady executing the same ratifies the same and all sign. To all of which and to the fact that I know the lady who executes this document, her occupation and residence, I certify: Eleanor Erica Andrews; Candido del Rosario; Tomás Pilar; Signed Enrique Barrera y Caldes; it is rubricated; there is a seal of a notarial office."

PLAINTIFF'S EXHIBIT "B."

MANILA, P. I., *July* 5, 1903.

Monsignor Jean Baptiste Guidi, Archbishop of Stauropoli and Apostolic Delegate to the Philippine Islands, Manila.

YOUR EXCELLENCY: After a very full consideration of the subject and with the concurrence of the Commission, I beg to make an offer on behalf of the Philippine Government for the so-called Friar's Lands, which include, first, certain haciendas at one time owned by the Dominican Order in these Islands and now owned by the Philippine Sugar Estates Development Company represented by Mr. Gutierrez; second, certain haciendas at one time owned by the Agustinian Order and now owned by the Compañia Agrícola de Ultramar represented by the Augustinian Friar, Parde Juan; and third, the haciendas of San Juan and San Nicolas, generally known as the Imus estates at one time owned by the Recoleto Order, and now owned by an English corporation, the British Manila Estates Company, Limited, represented by Mr. McGregor, and also an estate in Min-

134 doro of sixty thousand acres, still owned I am informed, by the Recoleto Order. The offer I am about to make is, of course, subject to the approval of the Secretary of War, but if accepted, it will doubtless receive his approval.

The members of the Commission believe that the evidence of Juan Villegas as to the value of these lands at present is just. At the conferences between Your Excellency, the representatives of the three corporations now holding title, and myself, there was some discussion as to whether the fall in the price of silver and the variation in the silver standard in the gold values ought not to play a large part in weighing Señor Villegas' evidence. My own con-

viction is that Señor Villegas' evidence is not in the slightest degree affected by the variation in the price of silver, for the reason that the persons who own lands and who buy and sell them in the provinces where the lands in question are situated know no other standard for the estimation of the value of lands than that of Mexican silver. It may be that indirectly the fall in the price of silver will ultimately affect the value of these lands in silver and it is possible that some slight increase has already taken place in the value of the lands estimated in silver. But it seems clear from the evidence that the increase is not all commensurate with the fall in silver. Nevertheless, for the purpose of reaching an agreement, we are willing to waive any such discussion by treating the value placed by Señor Villegas on the lands in Mexican as a value to be reduced to gold at the ratio of two to one. This ratio in fact did prevail when Señor Villegas began his surveys in November, 1901, but very soon changed. This is a concession which amounts to an increase in the valuation of the land over which it would be at the present rate of Mexican of a little less than twenty per cent.

I enclose herewith detailed and summarized statements of the various valuations of Señor Villegas, who has examined and placed
135 a value upon all the estates involved in this matter, except an estate of the Augustinians in Isabela of some sixty thousand acres which is almost wholly unimproved and an estate of the Recoletos in Mindoro of about the same extent. I asked Mr. Webber, the manager of the General Tobacco Company who knows the Isabela estate well, what value he placed upon it. He said that at one time he had offered one hundred thousand gold for it, but that the offer was declined. I asked him if he would give one hundred and fifty thousand or two hundred thousand for it in gold, and he said that he would give two hundred thousand dollars for it in gold, if he could obtain free admission of Chinese laborers into the Islands. I said to him that that was impossible, and then he said that he would not give one hundred and fifty thousand dollars, for the lands. The value of this land is in the statement assessed at three hundred thousand dollars Mexican, which is a full price. The Mindoro estate is fixed at six hundred thousand dollars Mexican, because of definite information that this estate, together with the cattle on it, was offered as late as last fall to certain gentlemen in the City of Manila for seven hundred thousand dollars, Mexican, and that the offer was declined. At that time the gold-Mexican ratio was between two-forty and two-fifty. The other valuations in the enclosed statement are taken from Señor Villegas' evidence. The total valuations in Mexican are as follows:

The Dominican Lands	$5,473,799.13
The Augustinian Lands	4,407,335.65
The Recolletto Lands	2,205,303.33
Making a total in Mexican currency of	$12,086,438.11

The Civil Government proposes to pay for a good title to these lands, free and unincumbered, the prices above named reduced to gold at the ratio of two to one, as follows:

CLOSE IN CENTER

For the Dominican Lands	$2,736,899.57
For the Augustinian Lands	2,203,667.83
For the Recolletto Lands	1,102,651.67
Making a total in gold of	$6,043,219.07

I have sent a copy of this letter to the representatives who
136 were present at our conference; Señor Gutierrez for the Dominican Lands, Padre Juan for the Augustinian Lands; and Mr. McGregor for Imus estate. I have not seen any representative of the Mindoro Estate, and so assume that Your Excellency either represents the Order of Recolletos, or will forward a copy, if you deem it wise, to the proper person.

I have so often said to Your Excellency, and to the representatives of these Estates that the motive of the Government in taking this land is purely political and not for the purpose of profit, but perhaps it is unnecessary to repeat it. Still, as this is a formal offer, it may not be improper to state again that the Civil Government in making the purchase at the prices herein named, if they shall be accepted, has not the slightest idea that it will make any profit in disposing of the lands in accordance with the Act of Congress to the tenants who now occupy it. On the contrary, the members of the Commission are confident that it will result in a pecuniary loss to the Civil Government. It is hoped that if the Government takes charge of this land, it will be better able to secure peaceable possession of the land and an attornment of the tenants than would private corporations, especially those in which the Spanish Friars are supposed to have a large interest. What the Government proposes is to buy a law suit, and something more than a law suit, an agrarian dispute. If peaceable transfer of the title to these lands from the corporations now claiming ownership in them to the tenants in possession could be accomplished without the intervention of the Civil Government, the Civil Government would be most anxious to avoid any intervention in the matter at all. Indeed it would be to its interest to contribute by a substantial sum to this peaceable result. While we hope that ownership by the Government may accomplish good, the hope is largely based on conjecture. Certainly the purchase of these lands will mean the assumption of another very heavy burden by the Government in addition to those which it is now attempting to carry. We are convinced that it
137 would be greatly to the advantage of the present owners of the land to accept the offer. It involves the expenditure of six million dollars gold, a sum which must be secured by issuing bonds to that amount under the Act of Congress. The members of the Commission are unanimously of the opinion that the disadvantage of any substantial increase of such financial burden would outweigh any advantage which might accrue from the Government ownership of the lands.

In making this offer, I beg to call Your Excellency's attention to the fact that the Secretary of War, in a telegraphic dispatch, a copy of which I transmitted to His Eminence, Cardinal Rampolla,

in my letter of July 15, 1902, requested that a detailed statement of the interests retained by the Monastic Orders in the corporate stock of the companies now claiming to own the lands be furnished to me by the Apostolic Delegate, who was to be sent to the Philippine Islands, in order that the statement might be made the basis for the proposed negotiation. The request of the Secretary was acquiesced in by Cardinal Rampolla. In February, 1903, I invited Your Excellency's attention to this matter and requested that the details requested be furnished. I have as yet received no formal reply. Without waiting for it, however, I have ventured to make this offer with the hope that if it is accepted further investigation and discussion may be avoided.

With the hope that Your Excellency will find it convenient with your views of the situation to advise the representatives of the owners of these lands to accept this offer, I beg to subscribe myself,

With great respect

Your Excellency's Most Obedient Servant,

(Sgd.) WM. H. TAFT,
Civil Governor.

PLAINTIFF'S EXHIBIT "C."

Copy.

MANILA, P. I., *December* 22, 1903.

138 The Philippine Sugar Estates Development Company, Limited, purporting to be a corporation of the Philippine Islands, duly and lawfully organized, hereby agrees to sell and convey to the Government of the Philippine Islands eight (8) haciendas, formerly the property of the Dominican Order in the Philippines, as follows:

(1) The hacienda of Biñan, in the Province of Laguna, said to contain, by the survey of Villegas, a surveyor, 3,739 hectares, 10 ares and 15 centares.

(2) The hacienda of Calamba, in the province of Laguna, said to contain 16,424 hectares and 14 ares.

(3) The hacienda of Lolomboy, in the province of Bulacan, divided into three parts—the first and second parts at Polo, one containing 106 hectares and 53 ares, and the other containing 65 hectares 19 ares and 50 centares, and the third part in the pueblo of Bocaue, containing 4,158 hectares, 9 ares and 66 centares;

(4) The hacienda of Naic, in the province of Cavite, said to contain 7,922 hectares and 29 ares;

(5) The hacienda of Orion, in the province of Batan, said to contain 2,109 hectares, 57 ares and 24 centares;

(6) The hacienda of Santa Cruz de Malabon in the province of Cavite, said to contain 8,902 hectares, 37 ares and 50 centares;

(7) The hacienda of Santa Maria de Pandi, in the province of Bulacan, said to contain 12,069 hectares, 57 ares and 2 centares;

(8) The hacienda of Santa Rosa, in the province of Laguna said to contain 4,750 hectares, 14 ares, and 24 centares, and

in addition a parcel of land in Toro, in the province of Bulacan, said to contain 58 hectares, 23 ares and 30 centares, which is really part of either the hacienda of Lolomboy or that of Santa Maria de Pandi.

Reserving therefrom the casa hacienda and camarine in the hacienda and pueblo of Santa Rosa, in the province of Laguna, including the land enclosed within the walls surrounding said casa and camarine and two hundred hectares of first class agricultural land therein to be selected by the agent of the Philippine Sugar Estates Company,
Limited, in a reasonably compact form near the casa haci-
139 enda, and selected so as to interfere with the use of the
rest of the estate by the Philippine Government as little as possible and so as not to include any part of the población but only agricultural land; reserving also the casa Majala on the mountain side of the Calamba estate, together with eight hundred hectares of cultivated sugar lands extending from the Casa Majala toward the town of Calamba, to be selected by the Company's agent in as near a compact tract as practicable and so as not to interfere with the use of the remainder of the estate by the Philippine Government. The reservation of neither of these tracts is to include the source of water supply for the estate from which reserved, and is not to be used by the Philippine Sugar Estates Development Company, Limited, or any successor in title, to the prejudice of the Government in the Philippine Islands or any successor in title to the lands hereby conveyed so far as the use of water thereon and the present system of irrigation is concerned, which shall be continued for the benefit of both parties herein in accordance with the laws and customs of the Philippines in the year 1898.

This sale and conveyance shall include all the dwelling houses, farm houses, warehouses, camarines, and other buildings, irrigation work dams, tunnels, ditches and all other improvements, together with all water and other rights and all hereditaments belonging to the Company on every part of the estates hereby agreed to be conveyed, except the two houses expressly reserved above, and also excepting a camarin in the población of Orion in the province of Bataan, and a camarine in the población of Calamba which belonged to the Philippine Sugar Estates Development Company, Limited, but were not valued by Villegas, the surveyor, in the survey hereinafter referred to, from ignorance that they belonged to the Company. The land upon which the camarines of Orion and
Calamba stand is not included in this conveyance. It is
140 understood that the Philippine Sugar Estates Development
Company, Limited, has sold upwards of four hundred hectares of sugar land in the Calamba estate which is to be included in the eight hundred hectares herein reserved to the company and to be satisfied out of the same. It is also understood that the company has sold ten hectares, more or less, with a rice mill thereon, in Biñan and town lots in Biñan, Calamba, and Santa Cruz. To make up for this amount and for the two lots in Orion and Calamba

upon which stand the camarines mentioned above, the said Company agrees to reduce the reservation of two hundred hectares in Santa Rosa by the amount thus sold in Biñan, Calamba and Santa Cruz, and by the amount retained in Orion and Calamba.

The Philippine Sugar Estates Development Company, Limited, agrees that it has good and merchantable titles to all the lands and buildings hereby conveyed, duly registered according to the laws of the Philippine Islands, that it will produce evidence of the same for examination by counsel for the Philippine Government as soon as practicable after the signing of this contract, and that it will convey such lands and buildings absolutely and in fee simple in accordance with this contract by a good and sufficient deed of general warranty of title to the Philippine Government. The Philippine Sugar Estates Development Company, Limited, further agrees to furnish to the Philippine Government all its books, papers and other documents which it has, either in possession or under its control, bearing upon its ownership, or the ownership of its predecessors in title, of the lands herein agreed to be conveyed, which shall in the opinion of counsel for the Philippine Government, be useful to such Government in determining who are the rightful tenants on the property, and in showing, in cases of litigation, the lawful and peaceable possession of the Philippine Sugar Estates Development Company, Limited, or
141 its predecessors in title, and especially showing the lawful and peaceable possession of the Dominican Order of the Philippines during the sovereignty of Spain. The Philippine Sugar Estates Development Company, Limited, further agrees to aid the Philippine Government in every way by procuring oral or documentary evidence needed in confirming the title hereby conveyed, or by showing where such evidence can be procured. The Philippine Sugar Estates Development Company, Limited, further agrees that the Philippine Government may at its own expense make such surveys of any of the haciendas as it sees fit in order to determine whether the superficial area of any hacienda according to the description thereof in the title deeds *in* the same as that stated in the above mentioned list of haciendas and parcels.

The Philippine Sugar Estates Development Company, Limited, also hereby agrees to assign and transfer to the Government of the Philippine Islands all claims for rents for use of land or buildings herein agreed to be conveyed due to the Philippine Sugar Estates Development Company, Limited, or its predecessors in title, from tenants thereof which are now uncollected, together with all claims for rent accruing betwen the date hereof and the consummation of the sale herein agreed to be made, except such rents as may be owing to the said Company for occupation of its houses by the United States troops.

It is understood that this contract is based upon a series of surveys made by a surveyor named Juan Villegas during the years 1901 and 1902 at the instance of the Government of the Philippine Islands, in which he classified and appraised the lands of the Philippine Sugar Estates Development Company, Limited, herein agreed to be

conveyed; that on the basis of this survey, classification
142 and appraisement, the Civil Governor on behalf of the government of the Philippine Islands, by letter to Monsignor Jean Baptiste Guidi, Archbishop of Stauropoli and Apostolic Delegate to the Philippine Islands, dated July 5, 1903, made an offer to purchase the lands above described at the prices fixed by Villegas in Mexican currency reduced to gold at the rate of two to one, and this letter of the Civil Governor, together with the list of the estates of the Dominicans, so called, which accompanied the letter and the surveys of Villegas of said estates, is hereby, for the better understanding of this contract, made part hereof as an exhibit by reference—it being understood that the estate of San Juan del Monte, mentioned in the list as belonging to the Dominicans, was never conveyed to the Philippine Sugar Estates Development Company, Limited, and is not owned by the said company, and is not included in this agreement to sell.

In consideration of the sale and conveyance of the lands and buildings and the assignment of the claims for rent, all as above described, the Government of the Philippine Islands agrees to pay to the Philippine Sugar Estates Development Company, Limited the sum of three million, six hundred seventy one thousand, six hundred and fifty seven dollars ($3,671,657.), in money of the United States, subject to this proviso: That if the Government of the Philippine Islands shall notify the Philippine Sugar Estates Development Company, Limited, that the area of any hacienda that is described in the title deed thereof falls short of the superficial area thereof as shown by Villegas' survey of the same, then the parties hereto shall cause a joint survey of the same to be made by an agent of each; and if the true survey shall show the area of the hacienda to be less than as stated by Villegas in the list hereinbefore set forth, then the
143 price herein agreed to be paid shall be abated by an amount to be ascertained by multiplying the number of hectares short into the average value of a hectare in the hacienda in question as shown by dividing Villegas' total valuation of such hacienda by the total number of hectares contained therein according to the survey, plus twenty-five per cent. thereof and if, on the other hand, the true survey shall show an excess of hectares over the amount reported by Villegas, then the price to be paid shall be increased by an amount ascertained in a similar manner.

In addition to the foregoing considerations the Philippine Government also stipulates that the Philippine Sugar Estates Development Company, Limited, shall be acquitted of the obligation to pay all the uncollected land taxes on the lands, buildings and other improvements herein agreed to be conveyed to the Philippine Government which are due to the provinces or the municipalities in which the same are respectively situated.

It is understood that the Government of the Philippine Islands, in order to pay the purchase price hereof, is obliged to sell its bonds under and by virtue of the authority of Section 64 of the Act of Congress of the United States, approved July 1, 1902, entitled "An Act temporarily to provide for the administration of the affairs of Civil Government in the Philippine Islands, and for other purposes."

The Government of the Philippine Islands agrees to make every effort to sell the bonds and obtain the proceeds as soon as is practicable, and the time for the consummation of this contract by the conveyance of a good and marketable title by the Philippine Sugar Estates Development Company, Limited, and the payment of the purchase price by the Government of the Philippine Islands is fixed as of the end of the period within which such bonds may be en-
144 graved, advertised, sold and the proceeds thereof realized, and the necessary surveys and necessary investigation of the title be made by prompt action of the Philippine Government, not exceeding six months from the date of this contract.

In witness whereof, the two parties to this agreement hereunto affix their signatures, the Philippine Sugar Estates Development Company, Limited, acting by Francisco Gutierrez, the Attorney in Fact of said Company, as shown by the attached power of attorney, and the Government of the Philippine Islands, by Wm. H. Taft, Civil Governor, whose authority is shown by a certified copy of a resolution of the Philippine Commission also hereto attached.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED,
By FRANCO. GUTIERREZ,
Attorney in Fact.

In presence of
JEAN BAPTISTE GUIDI,
Archbishop of Stauropoli, Apostolic Delegate.
A. W. FERGUSSON.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
By WM. H. TAFT, *Civil Governor.*

Official copy respectfully furnished Thos. C. Kinney, Esq., Attorney at law, as an inclosure to communication addressed him this date by the undersigned.

Government of the Philippine Islands Executive Bureau, Manila.
(A. W. FERGUSSON,)
Executive Secretary.

January 22, 1904.

145 PLAINTIFFS' EXHIBIT "D."

I, Enrique y Caldes, doctor of civil and canonic law, notary public of the city of Manila and mercantile registrar of this capital,

Certify: that on page No. 228, folio 23, volume 7 of the book of corporations of the mercantile registry of this capital appears the following inscription:

I. "The Philippine Sugar Estates Development Company, Limited." By document No. 65 of this series, executed in this City the 29th day of January, 1900 before the undersigned mercantile registrar, as notary public of this capital, Don Baldomero Hazañas y

Verdugo in his capacity as attorney in fact and representative of "La sociedad universal comun de bienes," and with carácter aleatorio, domiciled in Haiphong, as appears from the power inserted in said document; and Don Richard Henry Andrews and Mr. Barry Baldwin, the latter two in their own right and representation, have constituted a corporation under the following estatutos: 1:—Name: 1:—The corporation adopts the name of "The Philippine Sugar Estates Development Company, Limited"; 2:—Management and administration: 2:—The full direction and administration and other rights of a corporation as an artificial person shall pertain to the stockholders, convened in general meeting, but for the immediate exercise of these rights there shall be elected a Board of Directors composed of five individuals selected from among the stockholders, one of whom shall be elected as President; another as agent and administrator general, and the others shall be simply directors with the right to vote; third: For the purpose of guaranteeing the responsibility which they may incur in the discharge of their duties, they shall deposit in the treasury of the company the shares which they possess in the corporation; the President to the value of $20,000 pesos; the agent and administrator general to the value of ten thousand pesos; all of which stock cannot be returned to them nor be alienated by them until after they have ceased in their duties and their accounts have been finally approved, and the transactions in which they intervene, and it appears that there is no responsibility towards the company, but they shall receive dividends upon the stock during the time of such deposit; Fourth: the vacancies that may occur during the time that intervened between the ordinary general meetings of stockholders shall be filled by the Board of Directors temporarily until in the first general meeting that takes place, although an extraordinary meeting, the permanent election is made; fifth: The office of President and Members of the Board of Directors, with the exception of the agent and administrator general shall be filled every two years by means of an election which shall take place by secret vote in general meeting of stockholders; only the agent and administrator general may be removed in the meantime by a secret vote of at least three of the members of the Board of Directors who vote for his complete removal, which removal must be submitted to the first general meeting of stockholders that takes place for the purpose of their confirmation or revocation; sixth: it is agreed that during the first five years of the existence of this corporation, that is to say, until the ordinary general meeting which shall take place in the month of August, 1905, Richard Henry Andrews shall be the agent and administrator general, with all the powers necessary for the most ample and independent administration under the immediate in-
147 spection of the President, giving to the Board of Directors monthly information and accounts of the use he may have made of his powers, and annual report to the general meeting of the stockholders in writing; together with the balance for the year; it is understood that in the said powers of the administrator general, besides the representation of the corporation, is included the ex-

clusive intervention in the management of the hacienda, rents, crops, purchases and sales of product, lands, and lessees and tenants under his responsibility, and the appointing of sub-administrators that may be necessary for the eight haciendas, with the salary or participation in the net product of the said haciendas as the Board of Directors may determine; the said Andrews, as agent and administrator general, shall receive an annual salary of ten thousand pesos, and such a per cent. of the profits as hereafter may be determined; and shall have the right to a vacation of three months for each year of the five years of his agreed term of office, which vacation he may use at one or various times, taking into account, when he makes use of his vacation, the time passed for which he has not enjoyed said vacation but he must appoint a person to take his place, during the time of his vacation, in the exercise of the powers and representation of the corporation, under his own responsibility, and he must also pay on his own account the said substitute; seventh: it is likewise established that the other two parties to this document shall constitute with Mr. Andrews the Board of Directors of the corporation, and that Mr. Hazañas shall be the President, or the person who may substitute Mr. Hazañas in his representation, until in the month of August of the present year, the general meeting of stockholders can take place, and the persons from among the stockholders may be definitely elected as is provided in Article 5,
who shall thereafter perform the duties of the office of Presi-
148 dent and the office of the three memberships of said Board of Directors; Third: Capital stock: Eight: As the principal portion of the capital of this corporation, which shall be five million dollars Mr. Richard Henry Andrews brings to and transmits to the corporation which they constitute, the ownership of the eight haciendas which he has acquired, from the Dominican Fathers by a public document executed in this city as No. 465, before the present Notary, the eighth day of August, 1898, and which haciendas the three parties to this document value at 4,230,000 pesos: the descriptions, situation and extent of which haciendas, taken from the description which was given in full in the notarial document supplemental to said deed and written by me, the present notary, at the request of the Reverend Father Candido García Valles, who as Vicar General of the said Dominican Fathers, executed the same the tenth day of November of said year and which description is as follows: A. — hacienda named San Juan Bautista de Calamba, situated in the limits of the pueblo of Calamba in the province and judicial division of La Laguna, bounded on the North by the dividing line between said pueblo and the pueblo of Cabuyao; on the south by the pueblo of Los Baños, on the east by the Laguna de Bay, including the Islet of Pulog-Calamba, and on the west by the pueblos of Tanauan and Santo Tomás, in the province of Batangas; it has a superficial area of 16,414 hectares; it has at present half of its land uncultivated where building lumber abounds; also firewood and quarries, pastures; the other half, or 2/5 parts, except the small portion dedicated to building lots in the pueblo and barrios of Calamba, is devoted to the cultivation of rice by means of irrigation,

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and two crops, at least, are had, and to the cultivation of sugar cane and rice called de monte; within its perimeter and situated
149 in the plaza of the pueblo is the main building of the hacienda, of brick and tile, and two warehouses independent of the main building, stable of brick, two patios and orchards and zacatales, all surrounded by a wall partly of masonry and partly of beams with masonry foundation; the same fronts on the plaza of the pueblo and is bounded in the rear by Calle Nueva, that is to say, the one that passes behind the church and the convent; upon the right by a large lot which (Then follows a minute description of the eight haciendas, and of other property transferred to the corporation by Mr. Hazañas). Tenth: The corporation reserves the right to increase its capital in the amount that may be agreed upon at a general meeting of stockholders, after all the stock of the first series has been disposed of; the stock thereafter emitted shall be of the second series. Fourth: Stock: The number and value they represent: Eleventh: The number of shares of stock in which the capital stock of five millions is divided shall be fifty thousand, of one hundred pesos each, of which 42 thousand 300 of a nominal value of 4,230,000 dollars (pesos) correspond to the value of the eight haciendas, and seven thousand seven hundred of a nominal value of $770,000 pesos are destined as before stated to represent the rest of the capital in cash necessary for the exploitation of the haciendas; Twelfth: Until the corporation shall have received its certificates of stock with the corresponding coupons, which shall be made in England and printed in English, provisional certificates of stock shall be issued in Spanish, lithographed in Manila, and each certificate of stock of the former or the latter may represent one, ten, one hundred, or a thousand shares, at the election of the one who first acquires them, or who effects the substitution of the provisional certificates for the final ones. Thirteenth: The 42,300 shares, representing the 4,230,000 pesos in which the haciendas are
150 valued, are distributed in the following manner: 41,000 shares of the nominal — of 4,100,500 pesos entirely paid and certificates to bearer to the sociedad universal de bienes y con carácter aleatorio of Haiphong, Tonquin, represented by Mr. Hazañas, to whom or his substitute shall be delivered the certificates of stock. The said shares of stock belong to the said corporation as one of the founders of this corporation, and as assignee of all the rights of the Dominican corporation in the portion of the price of the haciendas by it sold to Mr. Andrews, and which price the latter continued owing to the same according to the deed of the 8th of August, 1898, and the other rights which it reserved in the same deed, and which it has transmitted to the corporation represented by Mr. Hazañas in the deed of the date already mentioned, among which there is the credit calculated in about 200,000 pesos, which the said Dominican corporation has ceded to said Haiphong corporation gratuitously in the said deed, the clause containing said cession being of the following tenor: 1. That it cedes to the said corporation formed by Monseñor José Torres, Bishop and M. M., Felix de Fuentes, Pedro Soriano, Tomás Guiro, and Bonifacio García, priests,

the said credits subrogating the said corporation in the place and rights of the Dominican corporation, for the purpose that it may collect the 3,791,700 pesos at the time, manner and conditions stipulated in the deed of August 8, 1898, for the same sum of 3,791,700 pesos which he confesses his corporation has heretofore received from the other corporation, to whom this cession is made, and for the purpose that it may collect the credits and rights which his corporation has against the tenants of the said haciendas for advances of money, debts for rent, or in any other manner, calculated about 200,000 pesos, which his corporation cedes gratuitously to the said society, but by reason of this gratuitous cession
151 his corporation does not guarantee the amount or collectibility of the said credits, nor the solvency of the debtors affected by this cession, and Mr. Hazañas, in his representation of the said company, cedes and transmits likewise the right to enforce and make effective the said credits.

Eight hundred shares of the nominal value of 80,000 pesos, entirely paid up and in certificates to bearer shall be delivered to Mr. Richard Henry Andrews, these shares belonging to the said Mr. Andrews as the founder, and assignor to the company which they constitute of the property which he acquired in the said haciendas and transmits to the said corporation: One hundred shares of the nominal value of 10,000 pesos entirely paid up and certificates to bearer, shall be reserved in the treasury and shall be delivered to Mr. Baldwin as a founder, whenever he shall have subscribed 2,300 shares for the nominal value of 230,000 pesos, which he offers to place; and 385 shares of the nominal value of 38,500 pesos, entirely paid up and certificates to bearer, shall likewise remain in the treasury, to be granted to those who subscribe for 20 or more shares of the 7,700 shares which must be sold for cash; these shall be delivered at the rate of one share for each 2,000 pesos paid in for shares fully paid up, that is to say, a premium of 5% upon the capital;

Those which are not divided and remain over in default of stockholders which acquire this right, shall be reserved for emission or sale in case the capital stock is increased. Fifth: Time in which the other stock must be paid up. Fourteenth: The 7,700 shares remaining of the first series of the nominal value of 770,000 pesos, shall be paid up in the following manner: 25% of their value at the time of subscribing, another 25% within 3 months, 50%
152 remaining shall be paid in as the Board of Directors may direct. Fifteenth: These shares shall not be to bearer until they are half paid up, but having once been half paid up, they shall become certificates to bearer and be entirely free, and the provisional certificates shall be exchanged for the final certificates upon the last payment being made. Sixteenth: Subscribers shall only receive that portion of the profits of the corporation for the year in which they subscribe in proportion to the time of the year and the amount of the capital paid in. Seventeenth: The time for which this corporation is constituted is fifty years, beginning from the 1st of January of the present year, and the thirtieth day of June 1949, is fixed as the day of its termination: The term of corporate existence

may be extended for an equal or greater period as the general meeting of stockholders may direct, prior to the last mentioned date. Operation to which the corporate capital shall be devoted; Eighteenth: As its name indicates, the principal object of the corporation shall be agricultural exploitation in all its phases by the most perfected methods; the construction of irrigation canals and water ways and roads, with locomotive power of animals or steam; dams for irrigation, warehouses and other buildings necessary for the eight haciendas transferred to the corporation, or in others which it may hereinafter acquire giving preference to the cultivation of sugar cane and rice, and other expedient products; the making and refining of sugar, the threshing and cleaning of rice by means of mills and machinery moved by any motive power; the cutting and hauling of trees for lumber or fire wood which will be produced upon the haciendas; to establish saw mills, mechanical or by hand, in places most appropriate therefor. The exploitation of quarries and mines of all kinds which may be found on the haciendas; to the sale and exploitation of all kinds of products of agricultural
153 origin or of minerals which it may obtain from its own ground; through its branch houses, agents, or commission merchants in all parts of the world; Nineteenth: According as the capital may permit the general meeting of stockholders may authorize the Board of Directors to begin any or all of the following operations: First: the begin-ing of agricultural or commercial enterprises in other provinces of the Philippine Islands than those in which their haciendas are now situated in which it may be profitable for the corporation, and to acquire for that purpose the necessary lands by sale or purchase exchange and leases, etc.; to construct and install factories in which the raw materials produces are worked and elaborated, whatever may be the products produced, and in the places most convenient for the enterprises which may be begun; to acquire and import machinery, apparatus and utensils which may *n*e necessary for the agricultural and mercantile exploitation; to replace the same by the most perfected and to sell those replaced as well as those which become useless and unserviceable;

2. To construct roads begin-ing from the roads established upon the haciendas to the ports of embarcation, and to obtain the necessary concessions therefor; to construct canals for navegation and railroads to facilitate the hauling of its products, utilizing steam, electricity or animals for power; to acquire and import all material necessary for that purpose, including rowboats, sail boats, or steam boats, to do the freighting to the points in which the company has established its warehouses of sale and exploitation, as well as from such to ships which may have to carry the products to ports in which preferable sails may be made; 3: To construct buildings that may be necessary to realize the objects before expressed: warehouses, dry docks, shipyards, for the construction and repair of ships, whether its own or those which it may repair for others without neglecting its own work; to establish machine shops for the
154 repair and construction of all kinds of machinery which it may need in its business, as well as those of other persons;

4: To enter into contracts with the Government, provincial or municipal authorities, or any other entity, corporation or person, which may be beneficial to the plans and objects of the corporation, and which are connected with some one of the objects established in this chapter; 5: To solicit and obtain from the Government concessions and privileges to which it may be entitled by reason of its special industries, invention or discoveries within or without its property; 6: To acquire property, and by virtue thereof to assume debts; to take charge, either in whole or in part, of property, credits, industries or other corporations, societies, or natural persons, devoted to the same enterprises as this corporation is authorized to undertake: 7: To purchase stock in navigation companies railroads, warehouses, dry docks, and mining enterprises; to become interested in this manner or by means of special agreements of participations in any agricultural or industrial enterprise, and to accept the fusion with it of other corporations and persons who may own such industries: 8: To contribute with such amount as it may determine to the formation of aid societies for the sick, helpless, widows and orphans; for the employees and workmen of the company; to establish within its haciendas or the pueblos within which the haciendas are situated all kinds of charitable institutions such as hospitals, asylums for infants, aged persons, educational establishments and libraries and lecture rooms; to establish and maintain in its haciendas chapels and churches destined to the worship of the religion professed by the majority that live on the haciendas, and to endow its ministers; to pension the sick of its factories workshops and haciendas, and the widows and orphans of those killed by accidents, during
155 the work which they perform, during the time that these pensions cannot be had by them from the institutions heretofore mentioned; to contribute at one time or periodically to any charitable work in general or in particular as the Board of Directors may see fit; the said Board of Directors without special authorization from the general meeting of the stockholders, besides undertaking the exploitation of the enterprises specified in article 18, may do the following: establish agencies and branch houses of the company where it may deem proper, and endeavor to have the corporation registered and known in all parts of the world. 10: To name the employés necessary therefor, and those which may be necessary in its offices and factories: to fix their pay and compensation as well as the compensation of the sub-administrators and other personnel of the haciendas, wages of the workmen which may be contracted for by the agent or general administrator or his delegates, directly or through the head of the groups of workmen; 11: To approve contracts of lease on shares and advances of money which lessees may make with tenants of the haciendas, and approve like contracts with directors of shipyards, machine shops and factories, in relation to work done therein not of the corporation: to fix the price of transportation and passage in its vessels, tramways and railroads; 12: To fix the price of purchase and sale of property and rights which the company acquires when this matter does not pertain to the general meeting, and to arrange the manner and time of making payments;

13: To immediately place the surplus funds in the treasury securely, after having deducted the cash necessary for the expenses of the company and the profits which may have been ordered divided, in banks or credit societies at interest at the current rate, or invest the same in first mortgages on city or country property, or take
156 therefor pledges of products, taking care that the repayment be made one month before the general balance of the year of the corporation must be made; this provision refers only to the profits of the concern and not to the capital; in relation to the capital, the provision relating to the time of the investments is not necessary to be observed: 14: To provide for the remuneration that may be necessary to other companies and persons which they may render this corporation in the placing of its stock or products or in any other transaction of its special objects; 15: To watch over the fulfillment of the orders which it may adopt in pursuance of its powers, and those which the rules of the company may grant it, and to provide for the due execution of the orders of the general meeting of stockholders, and to submit to the meeting of stockholders all modifications and extension of operations which it may have determined upon within the limits of the agricultural and industrial scope of the corporation; as well as those which it may have undertaken, with the specification in detail of the same, and an estimate of the sums which they have invested therein, and whatever may be necessary so that the stockholders may understand the same, or which they may deem necessary before authorizing the same. 20: The corporation can sell, exchange, mortgage, and lease the whole or part of any of the said haciendas, according as may be convinient for the realization of its principal object, and to invest whatever it may realize therefor in the acquisition of other lands, more appropriate for the corporation, or in the enlargement and perfection of its sugar factories; it may also sell or lease the building lots which form part of some of said haciendas, upon any conditions of payment, and equitable prices to those who hold them under lease. The resolution of the Board of Directors is
157 sufficient for the realization of said partial acts of disposition, but for the purpose of mortgaging or selling more than one hacienda, there is necessary the resolution of the general meeting of stockholders; Eighth:

Twenty-first. General meeting of stockholders: General meetings of stockholders shall be either ordinary or extraordinary; Twenty second: The ordinary meeting shall take place once a year, in the first fortnight of the month of August, the first meeting taking place in the first fortnight of the month of August of the present year 1900; Twenty third: The extraordinary meetings shall take place whenever the majority of the Board of Directors order the same, or the stockholders representing at least half of the stock ask the same, of the Board of Directors; in the petition asking the same, and in the other calling the meeting must be expressed the object thereof;

Twenty-fourth. For both meeting- the stockholders shall be called by an advertisement in a newspaper of greatest circulation in the

City of Manila, published 15 days for the first time before the meeting is to be held, and it shall be a prerequisite for the right to attend and vote at said meeting, to deposit in the treasury of the corporation until the day preceding the day of the meeting, the shares of stock in the necessary amount, which upon the deposit thereof shall be exchanged for a receipt expressing the number of shares deposited, their number and series, name of the person depositing them, and the number of votes to which he has a right, which receipt must be presented for the purpose of having the right of access to the room in which the meeting is held; Twenty-fifth: The meeting shall take place on the day and hour fixed in the call, with the stockholders that attend, whatever may be their number and the amount of stock they represent, excepting, the meeting whose object is the
158 modification or dissolution of the corporation, the prorrogation of its terms, or the reduction or increase of its capital stock, for which meeting there is necessary the attendance of stockholders who represent two-thirds of the capital stock at least. The resolution concerning the dissolution of the corporation cannot be passed unless by unanimous vote of the stockholders who attend the meeting expressly called for that purpose; Twenty-sixth: If the necessary number of shareholders do not attend the general meeting called for any of these specified objects, it shall be called a second time in the same manner, with ten days' prior notice, and the meeting shall take place whatever may be the number of stockholders that attend or whatever may be the amount of stock they represent; Twenty-seventh: The ownership of fifty shares of stock gives the right to attend a general meeting of stockholders, which number, united in the possession of one individual, and previously deposited, gives the right to one vote, and each stockholder attending may give as many votes as belong to him in this proportion to the number of stock which he has deposited; Twenty-eighth: The majority shall be considered as constituted in ordinary and extraordinary meeting of stockholders for the purpose of making an obligatory resolution, except in the case provided for in Article 25, where the unanimous vote of those attending is necessary, by the greater number of votes which assent to the resolution, although the votes are all voted by one shareholder; Twenty-ninth: The corporation submits to the majority or when in the proper case to the totality of the votes of those attending in such manner expressed in a meeting of stockholders duly called and constituted in all matters pertaining to its deliberation. Ninth: Distribution of profits: Thirtieth: The distribution of net profits which are yearly obtained shall be made im-
mediately upon the balance and accounts for the time corre-
159 sponding to the year since the first of July of the preceding year up to the thirtieth of June of the current year being approved; Thirty-first: For that purpose the account shall be closed on said last date, and the voucher shall be exhibited in the offices of the company from the day on which the first announcement is published, for the examination by the stockholders who have deposited their shares of stock; Thirty-second: From the amount of the net profits which have been obtained shall be deducted six per

cent. of the capital paid in, which shall be paid pro rata to the stockholders representing said capital; Thirty-third: The rest, after making said deductions, shall be distributed as follows: 4% to the agent and administrator general of the corporation; 3% to the President of the Board of Directors; another 3% in proportion to the number of sessions which they may have attended to the other three members of the Board of Directors; 20% shall be destined to the formation of a reserve fund until the same shall equal 20% of the capital stock; the 60% remaining shall be divided, together with the 6% of the capital to which the preceding number refers, between the stockholders in proportion to the capital represented by their stock in the corporation, in exchange for the corresponding coupons, in which shall be noted the amount of the profit divided per share; Tenth: Special agreement: For the purpose that the exploitation of the haciendas may be begun as they are recovered, and for the purpose of attending to the costs of the formation of this corporation and its expenses, Mr. Hazañas, in his representative capacity, gives at this time to Mr. Andrews, and the latter receives, the same as agent and administrator general of the corporation, the sum of 30,000 pesos, in cash, to which delivery and receipt I, the notary, certify; Mr. Andrews will deposit the said amount
160 in the name of the corporation which they found, in the Hongkong and Shanghai Banking Corporation of this city, in current account, against which he will draw the necessary checks under his signature and in the name of the corporation; the corporation receives the said amount as a loan, and for that reason binds itself at the interest of 6% per annum, from this date and to repay the capital and interest to the corporation represented by Mr. Hazañas, from the capital which it obtains from the stock which may be subscribed and the first products that may be realized from the hacienda; upon the foregoing basis and fundamental statute, they constitute the corporation The Philippine Sugar Estates Development Company, Limited, with the power to develop and expand the regulations for the better management, direction and administration of the corporation, which they will submit to the approbation of the first general meeting; the said Sr. Hazañas, Baldwin and Andrews promising for themselves and in the name of the other stockholders who may become such hereafter to comply therewith exactly.

Ex. E.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance for the City of Manila.

No. 2365.

ELEANOR ERICA STRONG, Formerly ELEANOR ERICA ANDREWS, and RICHARD P. STRONG, Her Husband, Plaintiffs,

vs.

FRANCISCO GUTIERREZ RÉPIDE, Defendant.

It is hereby stipulated and agreed that the following deposition of Governor Luke E. Wright shall be used at the trial
161 of this cause with the same force and effect as if the testimony here recorded were given in open Court. The intervention of a notary is expressly waived by defendant, and it is stipulated that all objections to the questions and answers recorded herein may be urged at the trial of this cause, when this deposition is presented, with the same force and effect as if made at the taking of the deposition, it being the purpose of this stipulation that no objection shall be entered by the stenographer at this time, without prejudice to their being urged at the trial of the cause.

Present: Thomas Colston Kinney, Attorney for Plaintiff. Charles H. Marple, Attorney for Defendant.

(Questions by Mr. KINNEY:)

Q. Please state your residence and official position.

A. I live in the city of Manila, and am at this time Civil Governor of the Philippine Islands.

Q. Please state what official position you occupied between July 1 and November 1, 1903.

A. I was Secretary of Commerce and Police of the Philippine Islands and a member of the Philippine Commission during the period mentioned.

Q. Are you familiar with certain negotiations which were had between the Government of the Philippine Islands on the one part and the owners of certain properties in the Philippine Islands, commonly known as the friar lands, looking to the purchase of said lands by the Government?

A. In a general way, yes. I did not personally conduct the negotiations between the Civil Government and the representatives of the corporations from which these lands were finally agreed
162 to be purchased. Governor William H. Taft had immediate charge of this matter, but I did meet the representatives of the corporations named, from time to time, and was consulted by Governor Taft very frequently and informed as to the status of the negotiations, and on several occasions directly engaged in the nego-

tiations with Monseñor Guidi, the Papal Delegate, by request of Governor Taft.

Q. Do you know whether or not an offer was made by the Philippine Government to the Philippine Sugar Estates Development Co. Limited, one of the owners of said lands, for their properties, and, if so, when said offer was made?

A. Yes, I know that the Philippine Commission, representing the Philippine Government, through the Civil Governor, (Honorable William H. Taft), did make an offer to the Philippine Sugar Estates Development Co., Ltd., for the purchase of its lands. The offer was made in a written communication, addressed to the Papal Delegate, Monsignor Jean Baptiste Guidi, Archbishop of Stauropoli, by Governor Taft, acting by authority of the Philippine Commission. The date of this communication, I see by an examination of a copy thereof, was July 5, 1903. A copy of this communication was also sent at the same time, as I am informed, to Señor Francisco Gutierrez, representing the Philippine Sugar Estates Development Co., a day or two later. Until I saw the date of the communication referred to above, I had supposed the offer had been made somewhat earlier than this, as Governor Taft had been authorized to make it, by the Commission, after a full discussion of the matter, about the middle of June, 1903. At that time, he and the other members of the Commission were at Baguio, in the Province of Benguet, and I suppose Governor Taft did not formally make the offer until his return to Manila, which was two or three weeks later.

163 Q. At what stage were the negotiations looking to the purchase of these lands by the Government, in the months of September and October, 1903?

A. After the Government made the offer above set forth, there was a period extending over several months during which Governor Taft, Monsignor Guidi, Señor Gutierrez, and the representatives of the other so-called friar lands were negotiating. The offer made on behalf of the Government by Governor Taft was not accepted by Señor Gutierrez, who demanded a very much larger sum for the holdings of the Company he represented, and the same was true of the representatives of the other companies. Governor Taft, as a rule, conducted the negotiations, although I was myself present on several occasions when the matter was the subject of discussion between Señor Gutierrez and Governor Taft, Vice-Governor Ide, and myself. Señor Gutierrez insisted that his properties were worth a great deal more than the sum offered by the Government for them (and Governor Taft was inclined to make very substantial concessions in the way of an increased price for them. Judge Ide and myself thought that we had offered enough in the first instance, or, at least, that it was not wise to increase our offer at that time, and the result was various conferences between the parties interested, as I have already stated. The result of the negotiations, which were spun out until the latter part of December, 1903, (December 22d was the date, I believe), was that the Government finally paid for the lands of the Philippine Sugar Estates Development Co. $3,671,657, United States Currency. Perhaps I should say, by way of explanation, that, whilst

Señor Gutierrez represented his company, Monsignor Guidi, as the representative of the Vatican, was consulted at every step in the negotiations, and participated therein.

164 (Questions by Mr. MARPLE:)

Q. Governor Wright, in what manner are the actions of the Philippine Commission preserved?

A. Minutes are kept by the Recorder of the Commission. At least, that is the general rule.

Q. Whence was derived and how was there conferred this authority upon Governor Taft to make the offer about which you have testified?

A. The authority of Governor Taft was, I suppose, ultimately derived from the Philippine Commission. As a matter of fact, however, Governor Taft had been authorized by the Secretary of War, whilst in the United States, in 1902, to go to Rome and there negotiate with the Holy See for the purchase of what are known as "Friar Lands."

Q. That authority of the Secretary of War was undoubtedly in writing?

A. My recollection is that it was all in writing.

Q. And that, therefore, whatever authority Governor Taft had from the Secretary of War is set forth in writing as regards the price that he was authorized to pay for these lands, and other conditions.

A. I should say, yes. I wish also to say, however, that whilst Governor Taft was in Rome, engaged in these negotiations, he reported from time to time what was going on to the Philippine Commission, and my recollection is that the latter, that is, the Philippine Commission, by resolution, gave him full power and authority to carry on the negotiations in its behalf, and to conclude a purchase of these lands.

Q. Then the authority of Governor Taft to make an offer for the Philippine Government appears in a resolution or in some writing of the Philippine Commission.

165 A. I do not think there is any doubt upon that point, and I answer, yes, unhesitatingly. In thinking this matter over, my memory is now somewhat refreshed. I had an impression that the Commission had formally authorized him to conclude the trade for the friar lands whilst at Baguio in June, 1903, but I am satisfied now, in thinking the matter over, that there was not at that time a formal resolution adopted, although the matter was fully discussed by the Commission; I mean the question of price was fully discussed at that time, and I am satisfied the reason why there was no formal resolution adopted at that time was because the Commission had theretofore already adopted a resolution giving him full power to conclude a trade.

Q. And has the Commission any rules of procedure affecting the manner or form in which authority in such transactions is conferred upon any one to enter therein in the name of the Commission?

A. Yes, the Commission has a uniform course of procedure which

it adopts in its sittings, that is, when matters are brought before i as to which it has jurisdiction, it passes upon them and records it action; though I may say it has sometimes happened that, through oversight, action has been taken and a formal resolution not spread upon the minutes until later. This however, has happened very rarely.

Q. Have you before you the resolution of the Commission au thorizing Governor Taft to acquire what you have referred to a the friar lands?

A. I have not at this moment, but I can procure it.

Q. It is in the executive files?

A. Yes.

Q. You have stated this offer to which you have referred was never withdrawn. Was there any act of the Commission ex
166 pressly continuing that offer in effect, I mean, any resolution or any law?

A. No, there was no resolution of the Commission expressly continuing it in effect, so far as I now recall.

Q. Do you know, Governor Wright, what, in the month of August or September, 1903, was the answer of Mr. Gutierrez to Governor Taft, so far as he was concerned, as regards the acceptance of this offer?

A. I am unable to be accurate as to dates, as I carry dates very poorly in my head, anyhow, and as in this case I did not attempt to do so, as I was not specifically charged with the negotiations. They were carried on, in the main, by Governor Taft. But I understood that, very shortly after the original offer was made, Señor Gutierrez stated on behalf of his clients, that they would not accept that offer, but demanded a much larger sum, and as I have already stated, thereafter the negotiations were continued.

Q. It is Mr. Gutierrez' impression, Governor Wright, that he never, and then only for himself, rejected this offer, of the Government, so far as the lands in which he was interested were concerned, until August or September, and that then he said to Governor Taft that, so far as he was concerned, that offer would not be accepted. Would you say that substantially that was not stated by Mr. Gutierrez in August or September to Governor Taft?

A. No, on the contrary, I am satisfied that it was said by him that he would not take the price the Government offered before that. I think it is possible that it might not have been earlier than the time indicated. My impression is that he rejected very promptly, not to say very promptly, but within a comparatively short time, the offer made and demanded more, and his
167 demand was reported by Governor Taft to the Commission. I say, to the Commission, certainly to myself as a member of the Commission, and I know it was the subject of frequent conversations between us, and I do not know that any formal action of the Commission was taken on the matter, but we discussed it back and forth every few days for several months, as to what concessions we would make and how far we would yield to the demands of Señor Gutierrez and the other gentlemen. I have no doubt that Señor

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Gutierrez saw Governor Taft many times when he did not see any other member of the Government. Of course, I cannot say what passed in interviews when I was not present.

Q. It is Mr. Gutierrez' recollection, Governor Wright, that he never saw Governor Taft or any member of the Commission with reference to this purchase, between some time in August or September and the latter part of November or the early part of December. Can you say that such, from your knowledge, was not the fact?

A. No, I cannot say that this is not the fact. I am not at all clear, as I have already stated, as to dates. I know, however, that during that period,—just what time I cannot at this moment state,—we understood that Señor Gutierrez would not accept our offer, and that he demanded, I think, nearly twice as much—I do not exactly recollect what his demand was—nearly or quite as much. I think the probability is that I could find the figures if it were material.

Q. Governor Wright, Mr. Gutierrez is of the impression that he never treated with you or in your presence on this matter until the month of December, very shortly before this contract of sale was signed. Is he correct in that, according to your recollection?

A. Yes, I think he is. I have no recollection of actively
168 engaging in the negotiations between the Government and Señor Gutierrez except on one occasion. My recollection, however, is that I met Mr. Gutierrez at Governor Taft's house, probably two months before that time, when they were discussing the question of the sale of the Friar lands, but I am not at all clear as to the date, but he did not come to see me, nor did I go to see him, and I took no part in the negotiations at that time.

Q. But you are not certain of having met Mr. Gutierrez then at the house of Governor Taft?

A. I am certain, as certain as I am of any matter with which I have not particularly charged my memory. I may be mistaken, of course, but, as I have already stated, I had no conversation with him about the Friar lands at that time, and took no part in the negotiations. I may ad-, in order not to convey a wrong impression, that it is possible that I may confuse some of the representatives of the other corporations with Señor Gutierrez. I think not, however.

Q. Was not the time you met Mr. Gutierrez at the house of Governor Taft at one of the usual receptions?

A. No, I met him at Governor Taft's office there, at the time I have in mind.

Q. At that time, while you were present, Mr. Gutierrez was not discussing the friar lands business?

A. I have a recollection that he and Governor Taft were discussing it at the time I went in and found him there, but I may be in error.

Q. You cannot fix that time with certainty?

A. No, as a rule, with the one exception, and that was as you have suggested in your question, some time in December. The information I got as to the state of the negotiations and the

offers back and forth was through conversation with Gover-
169 nor Taft.

Q. And there was, then, never any further act of the Commission authorizing Governor Taft to make another offer for those lands until December?

A. No, I think not. As I have already stated, the full authority was given Governor Taft by the Commission more than a year prior to that time, and there was no necessity for any further action.

Q. Is it not a fact, Governor Wright, that in August or September, 1903, or in both months, the newspapers and the general public and yourself believed that the negotiations for the purchase of the friar lands thus far conducted were futile?

A. I am unable to say as to what appeared in the newspapers during that period; I doubtless saw it at that time, but it made no impression upon me; but there was a period of two or three months when it was uncertain whether Señor Gutierrez and the other representatives of the parties in interest would so far recede from the extravagant prices they had placed on the lands that we might effect a purchase upon anything like reasonable terms.

Q. And can you say that that period did not last through the months of September and October?

A. No, I cannot. I think it very probable that it did.

Q. That situation continued very close in point of time to the final arrangement that concluded these negotiations?

A. I would not say very close; there was undoubtedly a period of two or three months during which Señor Gutierrez and the other gentlemen with whom Governor Taft was negotiating refused to recede from what we thought extravagant demands which they made for the land. Governor Taft thought very much more highly of the value of the lands than either Judge Ide or myself or Gen-
170 eral Smith, and we repeatedly discussed among ourselves the question as to how far we should go beyond the price we had originally offered, and I remember that Governor Taft asked me, on at least one occasion, and I think on two occasions, to call on Monsignor Guidi, with a view to giving him my opinion as to the extortionate demands made by the representatives of the Friars, with a view to having him exert his influence to make them come within reasonable bounds, and I did have one or two interviews,—at least two, probably,—with Monsignor Guidi, in which I endeavored to show him how unreasonable Señor Gutierrez and his colleagues were.

Q. As a matter of fact, then, yourself, Commissioner Smith, and Commissioner Ide, really for a long time were opposed to increasing this offer about which you have just testified?

A. Yes, I think that is true. We felt that the offer we made was all the lands were worth. I, for my part, thought that we had offered an outside price, but none of us advised the breaking off of negotiations, because we understood perfectly well that there were other considerations of a political character which entered into the question of what we were willing to pay if we were forced to do so, though I will say that at one time I advised, for the purpose of strengthening our position, that we withdraw our offer.

Q. Your position and that of the other Commissioners in this matter was communicated, was it not, to Monsignor Guidi as regards not increasing the original offer made?

A. Yes, I told Monsignor Guidi at least twice that I now recall, and, in thinking the matter over, I have an impression that on one, and perhaps on still another occasion, I met him socially, and he introduced the subject, and I expressed my views very freely. But the trouble was that Governor Taft and the other members
171 of the Commission did not accede to our views,—I mean by "our" Judge Ide and myself.

Q. Then there was during the summer and fall of 1903 a very decided opinion on the part of members of the Commission against increasing the offer as to which you have testified, that is, the original offer?

A. Yes, there was an objection, especially on the part of Judge Ide and myself, against making any further concessions for the time being. He and I thought that if we stood pat—if I may use a profane expression—for a while, at least, the probability was that Señor Gutierrez and his associates would come down in their demands, but Governor Taft entertained a contrary view, and I think in that he was backed up by a majority of the Commission. I may say, however, that there never was any formal break between us. It was purely a matter of judgment, and we discussed the matter in the most informal and friendly way. There was never any action of the Commission. We merely discussed it as the best way to reach an end.

Q. In these visits you made to Monsignor Guidi for the purpose of influencing him to cause these companies to reduce their demands, I suppose, Governor Wright, you gave him to understand about as strongly as you could, that if they did not take that, they might not get anything?

A. Yes, I think I did.

Q. With the idea, of course, that he would communicate that?

A. Certainly, that was the very object of my visit. I did not do it for any other purpose. The facts were that Governor Taft, I think, was rather using me as the wicked partner to reduce their demands, and, I may add, I was willing to be used for that purpose, because I thought our original offer was a liberal one.

172 Q. There was never made any separate offer to any of these companies for their lands, and it never was the intention of the Government to acquire the lands of one of these so-called orders or companies, unless the whole sale could be put through?

A. I am unable to answer that question either one way or the other. It is certainly true that we did not care to buy the lands in parcels, and I have no doubt that fact was stated to Señor Gutierrez and to every other representative of those various corporations with whom we were in negotiation, but I am not so sure of that, if the alternative had actually been presented, we would not have traded with some of the other representatives. The fact is that Señor Gutierrez was very much stiffer in his demands than any of the others, and I understood, from conversations that I heard between

him and Governor Taft, on the single occasion when we were discussing the matter, that he required some of the other corporations to give a part of their purchase money to him. I do not remember the details of it. I could get it from the papers. We have a lot of papers on that subject.

Q. The contract of sale signed by these companies about which you have testified, then, increased this original offer about 25 per cent.?

A. Yes, I think about 25 per cent.

Q. And besides that——

A. And besides that there was reserved the Mandaloy estate, which was valued, along with a large number of other lands, and was perhaps the most valuable, but was not a very large estate, valuable by reason of its contiguity to Manila. I should have stated that Señor Gutierrez also insisted on reserving a thousand hectareas and a house, the papers will show.

Q. Was it not as late as the 16th of December, when the Commission was in session, and I think Mr. Gutierrez was present,
173 that he announced that he would not, even with this increased price then discussed, so far as he was concerned, join in a sale unless these reservations of the lands for the company were consented to?

A. Yes, I think that was true, but the precise date I cannot say. I know I got very much out of patience with the way he was putting the gaff to us, although I tried not to show it.

Q. And is it not a fact that the Government not only in this last offer increased its price and consented to this reservation, but also took upon itself the collection for the Philippine Sugar Estates Development Co. and the delivery to that company of a certain part of the prices to be paid these other companies?

A. My impression is that that is true. As I have stated several times before, Governor Taft had specifically in hand the carrying out of the many details connected with this transaction, including the drawing up of the contracts, and I would not undertake to be specific as to all their contents. Of course, I am only speaking from memory, but I know that it was agreed as a part of the trade that the other orders should contribute a certain sum,—the exact amount I do not recall,—so as to increase the amount that Señor Gutierrez would get over and above the price which the Government agreed to pay him. I remember that he contended, in the conference I had with him, in conjunction with Governor Taft and Judge Ide, that his lands were worth more than—proportionately more than—the lands of some of these other companies, and that they should contribute something of what they were to get under the contract to help him out. Of course, that was a matter we cared nothing about.

Q. That conversation was on the 16th of December?

A. I am unable to say that that was or was not the date.
174 It was not very far from that time.

Q. It was almost immediately at the time of coming to this agreement?

A. Probably ten days before. I cannot be accurate about it. Possibly not so long. Mr. Gutierrez will be able to say.

Q. Who acted as interpreter at these meetings with Mr. Gutierrez at which you were present?

A. I have forgotten. I think it was probably Mr. Fergusson.

EXHIBIT 2.

"MANILA, *Nov.* 4, 1903.

MY DEAR MR. GUTIERREZ: I spoke yesterday with the Rev. Vicar Provincial of the Recoletos, and he promised me that he would immediately agree with the Rev. Padre Juan Martyn, to send to you the declaration you ask of his obligation toward the company which you represent. I hope that he will do it today. At all events, I will remind the Provincial of Recoletos; for my part, if you desire, I will myself make said declaration, as I have offered to do. With all respects, your devoted——

(Written on visiting card as follows: "Mgr. Giambattista Guidi, Arcivescovo tit. di Stauropoli; Delegato Apostolico Straordinario dele Isole Filippine.)

EXHIBIT 3.

MANILA, 24 *November*, 1903.

MY DEAR SIR: This morning I took the liberty to call you to the telephone, for the only purpose of informing you that the Rev. Vicar Provincial of the Augustinians has communicated to me a telegram from Padre Juan Martyn, in which the latter announces his arrival in Manila on Thursday or Friday of this week. Padre Juan has not been able to come sooner for want of a steamer.
175 I therefore trust that you will have patience because of this unexpected delay. With greatest consideration, I remain, your devoted servant,

(JUAN BAUTISTA GUIDI,
Apostolic Delegate.)

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila, Part IV.

Civil Case No. 2365.

ELEANOR ERICA STRONG, Formerly ELEANOR ERICA ANDREWS, and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

The facts in this case are comparatively simple, and, for the most part, undisputed. It appears that the plaintiff, Eleanor Erica Strong, was the owner of eight hundred shares of stock of the par value of One Hundred Dollars, Mexican currency, a share, in the Philippine

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Sugar Estates Development Company, Limited, purporting to be a corporation of the Philippine Islands and owning large tracts of land in the Philippine Islands, commonly known as "The Dominican Lands." These shares were inherited by the plaintiff, Eleanor Erica Strong, from her late husband, Richard Henry Andrews, and since his death, some three years or more ago, have been in the possession of one F. Stuart Jones, who had general charge of the plaintiff's estate. In the year 1902, the Government of the Philippine Islands, through Governor Taft, began negotiations for the purchase of all the so-called friar lands in the Philippines, which, for the purpose of this case, may be divided into the Dominican Lands, owned by the Philippine Sugar Estates Development Company, Limited, the Augustinian Lands, owned by the Cam-
176 pañía Agrícola de Ultramar, the Recoleto Lands, owned by the British-Manila Estates Company, and other lands of the Recoleto Order in Mindoro, known as "The Mindoro Estate."

On July 5th, 1903, Governor Taft, on behalf of the Philippine Government, made an offer of $6,043,219.07, gold, for all these lands, divided as follows: The Dominican Lands, $2,736,899.57, the Augustinian Lands, $2,203,667.83, and the Recoleto Lands, $1,102,651.67. That part of the Friar Lands known as the Mindoro Estate was subsequently separated from the other Recoleto Lands, and negotiated for separately. At this time, and, in fact, throughout the whole negotiations until the contract was completed, the defendant, Francisco Gutierrez, represented the Philippine Sugar Estates Development Company; Marcus McGregor, the British-Manila Estates Company; and Padre Juan Martyn, the Compañía Agrícola de Ultramar. The representatives of these three companies declined this offer, there apparently never being any thought of acceptance. The price fixed by the companies at this time was about $13,700,000, divided as follows: $6,000,000 for the Philippine Sugar Estates Development Company, $5,000,000 for the Compañía Agrícola de Ultramar, $2,000,000 for the British-Manila Estates Company, and $700,000 for the Mindoro Estates. Mr. McGregor states that in August Governor Taft intimated that if the other companies came down in their price forty per cent., as his company was willing to do, their offer might be accepted. He then went to work to persuade the other companies to reduce their price, and on October 15th, he was able to write to his principal in London that he had hopes of bringing something off, as Mr. Gutierrez showed signs of being willing to reduce his price. Mr. McGregor further states that he had intimations at that time that the Compañía Agrícola de Ultramar would doubtless agree to such a reduction, although
177 their agent was at that time in Shanghai. Mr. Gutierrez states that on the 10th of October he believed the whole question of sale was at an end, and it was toward the end of October that Mr. McGregor came to see him about the reduction of forty per cent. However, the Court believes that the statement of Mr. McGregor as to the date is more correct, he being a disinterested party and having copies of his letters to his home company to be guided by.

Toward the end of October Mr. McGregor, with the specific authority of Mr. Gutierrez, made an offer to Governor Taft to sell for $8,500,000. This was refused, and a counter-offer made of $7,200,000. Finally, Governor Taft offered $7,535,000, a reduction of forty-five per cent. on the original demand of the company, and this was the bid finally accepted, though, as a matter of fact, through some mistake, Mr. McGregor states, the actual contract price was $7,554,000, a 25 per cent. increase on the Government bid of July 5th, instead of a 45 per cent. reduction on the original demand of the companies. Mr. McGregor wrote home to his company regarding this last bid of Governor Taft on November 9th. After this there was some delay owing to the insistence of Mr. Gutierrez that a certain amount of land belonging to his company be excepted from the sale, and that the other two companies contribute to his company a certain amount of the purchase price, both of which demands being finally acceded to, about 1,000 hectares being cut out from the Philippine Sugar Estates Company's sale, and the other two companies conceding the sum of $335,000 to the company of Mr. Gutierrez. The contract was signed December 21st, 1903.

Now, as to the transaction which was the cause of this suit. Some time in September, Mr. Kauffman went to Mr. James Sloan, a broker, to purchase the 800 shares of stock, the subject of this action.

Mr. Sloan wrote to Dr. Strong concerning them, and was
178 by him referred to Mr. Jones. Mr. Sloan did go to see Mr. Jones, and offered him at different times $8,000, $15,000 and $16,000, Mexican currency, for these shares, the last offer being accepted by Mr. Jones, and the transfer was made to Mr. Kauffman in Mr. Sloan's office on October 10th, 103. Mr. Kauffman had stated to Mr. Sloan that he desired this stock for his wife's family, and paid for it with a check of Rueda Hermanos for $18,000, Mexican currency.

Mr. Jones had no direct authority to make this sale, though he did have direct authority to collect rents, etc., for Mrs. Strong, and had carried on her business affairs for three years past. It is clear that Mr. Gutierrez employed Mr. Kauffman to make this purchase, gave him the check for $18,000 to pay for the stock, and, according to Mr. Gutierrez Mr. Kauffman received $1,800 for the transaction. Mr. Gutierrez states that in November, 1902, he was commissioned by his brother, a resident of Spain, to purchase shares for him in any strong concern in the Philippines, that he purchased these shares in pursuance to this request, and he sent these shares to his brother in October 1903, by means of a friend going to Spain, without taking any receipt from or even keeping the letter from his brother acknowledging receipt, which he says was sent him.

There appears to have been 42,030 shares of the Philippine Sugar Estates Development Company issued, of which Mr. Gutierrez stated he owned 30,040, or nearly three-fourths of the total amount issued. Mr. Gutierrez was administrator of the Sugar Estates Company, and, owning the majority of the stock, could dictate whether the company should sell the lands or not. No extraordinary meeting of the shareholders was called to decide whether any of these offers of the

Government should be accepted or not until December 21st,
179 1903, the day the actual contract was signed, when the contract was authorized. It appears that Mr. Gutierrez talked in an informal way with the directors of the company, and even the directors appear to have known of the negotiations only in a general sort of way. Nor did Mr. Gutierrez ever inform the stockholders of the status of the negotiations; though it does appear that the proposed purchase of the friar lands was a common topic of conversation among the public, and was talked of generally in the different newspapers. Among the parties actually engaged, however, it was regarded as a private and almost confidential matter.

Owing to the political situation at the time, to the claim of ownership on the part of tenants of the lands, and to their open hostility toward anyone claiming title, the lands had not been worked to the benefit of the corporation for a long time, no rents, or comparatively few, had been collected, and no taxes had been paid to the Government. Mr. Gutierrez states that in his estimation the lands of his company were worth $6,000,000, if the company had full protection, nothing if there was no protection, and under the conditions existing, the actual value would be difficult to state.

In the complaint the plaintiff alleges that F. Stuart Jones transferred these shares without authority, that the defendant obtained such shares through fraud, and prays that the Court declare the shares in question to be the property of the plaintiff, and order the return of the same, and for such further and general relief as may be granted.

The defendant, in his answer, denies that F. Stuart Jones had no authority, or that fraud was employed, and declares that the plaintiff and her duly authorized attorney-in-fact, F. Stuart Jones, duly transferred, sold, and delivered the shares, with the intervention of
their regularly authorized broker, to Mr. Kauffman, who sub-
180 sequently sold and conveyed the same to the defendant, who, prior to the commencement of this action, and prior to the demand made on him by the plaintiff, sold, transferred, and delivered the said shares to Luis Gutierrez, a citizen and resident of Spain.

It is clear that Mr. Jones exceeded his authority in selling this stock, without first obtaining the consent of Mrs. Strong. His authority was limited expressly to the collection of whatever rents, interests, or debts that might be due the plaintiff, but he had no authority to dispose of any part of her estate. There is no evidence to show that the defendant had in any way been misled by the plaintiff as to the scope of Mr. Jones' authority. Nor does the defendant make that pretension. There is no doubt in the mind of the Court that the defendant knew, when he sent Mr. Kauffman to Mr. Sloan to purchase those shares, that they were the property of Mrs. Strong. He admits he knew these were the shares originally issued to Mrs. Strong, but states that inasmuch as Mr. Wood and Mr. Jones voted these shares in subsequent years, he believed she had disposed of them. But Mr. Gutierrez knew it was the custom for representatives of the owners to vote shares in his company, for

Mr. Kauffman voted his shares in 1892 and 1893. He therefore knew that this fact did not necessarily show that Mrs. Strong had lost the ownership. Again, Mr. Sloan declares that Mr. Kauffman came to him to buy these shares, and that he, Mr. Sloan, immediately wrote to Dr. Strong about them. It certainly seems most probable that both Mr. Kauffman, who went to buy these specific shares, and Mr. Gutierrez, who sent Mr. Kauffman on this mission, knew as well as Mr. Sloan that these were the shares of Mrs. Strong. In fact, the defendant had much more opportunity for knowing than Mr. Sloan, and such being the case, Mr. Gutierrez was bound to investigate what authority Mr. Jones actually had. Know-
181 ing that Mr. Jones was not the owner of the shares, but merely held them for his principal, Mrs. Strong, Mr. Gutierrez was not entitled to rely upon Mr. Jones' assumption of authority, and at his peril was bound to investigate whether the act done by the agent was the identical act authorized by the principal. There was no implied authority to dispose of these shares, nor, in fact, could there be any. Article 1713 of the Civil Code provides that: "In order to compromise, alienate, mortgage, or execute any other act of strict ownership, an express commission is required." In Article 1727 it is provided: "A principal is liable in so far as the agent has exceeded his power only when he ratifies the same expressly, or in an implied manner." The plaintiff in this case has never ratified the sale of these shares. Mr. Jones never notified her of the sale, nor did he transmit to her the purchase money, though he made a deposit to her account which he kept. As soon as the plaintiff learned of the sale, incidentally through a conversation, she repudiated it, and within a reasonable period took steps to have the transaction set aside. This ground alone would be sufficient to set aside the contract and declare it null and void. And further than this, it appears that the transaction was fraudulent. The defendant concealed from the plaintiff facts which he was legally bound to reveal. By the by-laws of the Philippine Sugar Estates Development Company, Article 20, it appears that to sell or mortgage more than one hacienda the consent of the shareholders at a general or extraordinary meeting is required. The negotiations with the Government were for the purpose of selling the entire property of the company, composed of eight haciendas. Mr. Gutierrez states that he carried on the negotiations as a shareholder. Apart from his position as administrator general, he therefore assumed to act as agent of the shareholders in the negotiations, and
182 subsequently could not deny, as to his principals, the obligations arising from such a position. It is true that it is held that the ordinary position of director or president of a corporation does not constitute such a fiduciary relation towards the shareholders as to prevent the purchase of shares by the president or director, without first revealing all that is known concerning the company. But Mr. Gutierrez stood in a very different capacity. Knowing that by his immense holdings of stock in the company he could dictate its policy, he assumed the position to the other stockholders as agent in the sale of these lands. Owning the majority of the stock, and

so controlling the corporation, he felt there was no need of calling together the stockholders, as he knew that he could vote down any proposal against his wish or force through anything he desired. In such a capacity he could not purchase shares from the stockholders without revealing to them whatever information he had secured by virtue of his negotiations as their agent. He assumed a position of trust, and certainly as to those for whom he acted, he cannot deny the duties which it involved when holding such a position. He had sound reasons to believe at the time he purchased these shares from the plaintiff, that if he agreed to sell the property of this company, the whole sale of the friar lands could be consummated. He was the stumbling block in the negotiations almost from the first, and on October 10th he knew full well that, being the majority shareholder in the Sugar Estates Company, his consent to the sale of these lands would practically mean that each share would be worth very nearly twice the par value. Knowing this, he fraudulently withheld his information as to the status of the negotiations from the plaintiff, and in a roundabout way purchased these shares at a price of $20, Mexican Currency, per share. Instead of going to
183 Mr. Jones' office, which was next door to his own, as any man with honest and honorable intent would do, he employed Mr. Kauffman to go to Mr. Sloan, a broker, and to negotiate through Mr. Sloan for the purchase of these shares at a shockingly inadequate price. Further, instead of giving his own check, he conceals his identity, by giving a check of Rueda Hermanos for the purchase of these shares, and then paid Mr. Kauffman $18,000, Mexican currency, for his part in the transaction. Then, although the head officers of the company were in this city, although Mr. Gutierrez himself owned 30,400 shares of this company, although the shares were bearer's shares and could be voted by him at the meeting, although he claims they were his brother's shares and that there was such a feeling of confidence between him and his brother that whatever was his was regarded as his brother's and whatever was his brother's was regarded as his, and although it would be important to have all the shares of the company in Manila upon the completion of the contract for the sale of all the property of the company and the dissolution of the company, he sends these shares, so he states, to Spain, and in this way puts them outside the jurisdiction of the Court. These actions certainly indicate strongly that the defendant was fully aware that he was committing a fraud on the plaintiff.

The Civil Code provides, in Article 1265: "Consent given by error, under violence, by intimidation or deceit, shall be void." And, in Article 1269, that: "There is deceit when by words or insidious machinations on the part of one of the contracting parties the other is induced to execute a contract which without them he would not have made." The Court believes that the actions of the defendant in concealing that which he was bound to reveal, and in taking the steps he did to render the concealment effectual, amount to "insidious machinations."

184 Upon the facts stated, the Court holds that the sale of these shares was made without the authority of Mrs. Strong, that she never ratified the sale, but repudiated it as soon as she learned of it, that this sale was induced by fraud on the part of the defendant, and therefore was a fraudulent sale.

The Court, therefore, declares that the purchase of these shares of stock by the defendant is fraudulent and void, and it is ordered by the Court that the same be set aside and for nothing held.

The present value of each share in the Philippine Sugar Estates Company appears to be One Hundred and Ninety Pesos and Sixty-four Centavos, Philippine Currency. This calculation is arrived at as follows: The lands of the Sugar Estates Company were sold for the sum of $3,671,657, the other companies conceded to the Sugar Estates Company the sum of $335,000, making a total of $4,006,657, United States Currency, received by the Sugar Estates Company by the sale of these lands. The liabilities of the company appear to be indefinite, but appear to be fully covered by the hacienda reserved from the sale. The Court will, therefore, regard the liabilities as offset by this tract of land in rendering its decision: 42,030 shares of the Sugar Estates Company were issued, which would, therefore, make the value of each share amount to $95.32, United States Currency. The 800 shares in question would, therefore, amount to $76,256, United States Currency, or $152,512, Philippine Currency. From this amount must be deducted the sum of $16,000, Mexican Currency, which the defendant paid to Mr. Jones, and which has been deposited by Mr. Jones to the credit of the plaintiff. No evidence as to the value of Mexican Currency was introduced at the trial, and reducing this amount to Philippine Currency, as required by law, the Court must take knowledge of the rate of exchange fixed by authority of the Government, which at the present date
185 is 1.13. $16,000, Mexican Currency, would, therefore, amount to $14,159.29, Philippine Currency. This amount deducted from the value of the 800 shares of stock would leave $138,352.71, Philippine Currency.

It is therefore ordered by the Court that the plaintiffs recover of the defendant the said sum of $138,352.71, Philippine Currency, and the cost of this suit. It is further ordered by the Court that the above judgment may be satisfied by the delivery to the plaintiff, Eleanor Erica Strong, of her said 800 shares of stock, within forty days from this date, in which event the plaintiff will pay to the defendant $16,000, Mexican Currency, or its equivalent in Philippine Currency. It further appears to the Court that 800 shares of said stock, the property of the defendant, has been attached in this case, and now in the hands of the sheriff of the city of Manila. It is therefore ordered by the Court that in the event that judgment herein rendered is not satisfied on or before the expiration of forty days from this date, that the said sheriff of the city of Manila, P. I., sell said 800 shares of stock so attached after advertising, as required by law, and apply the proceeds to the payment of the above rendered judgment and all costs.

Manila, P. I., April 29, 1904.

BEEKMAN WINTHROP, *Judge.*

EXHIBIT "G".

(Translation from Spanish.)

I, Señor Baldomero Hazañas y Verdugo, President of the Philippine Sugar Estates Development Company, Limited, a corporation duly organized and domiciled in this city,

186 Certify that at pages 116 and 117 of the Book of Minutes of this Company, duly stamped by the Justice of the Peace of the District of Binondo, this city, and certified by the same, on the first day of February, 1900, appears, literally, the following entry of a general extraordinary meeting of shareholders held December 21, 1903:

At the head offices of The Philippine Sugar Estates Development Company, Limited, Plaza del P. Moraga No. 9, City of Manila, Philippine Islands, this 21st day of December, 1903, at the hour of six-fifteen P. M., there were present Señor Baldomero de Hazañas y Verdugo, President, who produced evidence of his having deposited 200 shares, which said deposit entitles him, under Section 27 of the By-laws of this Company, to four votes; Señor Francisco Gutierrez Répide, General Manager, who produced evidence of his having deposited 30,400 shares, which said deposit entitles him to 608 votes; Señor R. W. Conde, who produced evidence of his having deposited 100 shares, which said deposit entitles him to two votes; Mr. Gerard L. Baldwin, with a deposit of one hundred shares, entitling him to two votes; and Mr. Barry Baldwin, with a deposit of fifty shares, entitling him to one vote; Señor Agustin Sosa y Seño being present in his capacity of Secretary; the purpose being to hold the general extraordinary meeting of shareholders, fifteen days' notice of which had already been given in the manner provided in Section 24 of the aforesaid By-laws; and, after a reading of Section 25 of the said By-laws, the President declared the general meeting in session, with the aforesaid shareholders present.

The meeting was called for the purpose of discussing the provisions of Section — of said By-laws, which is literally to the following effect: "The Company may sell, exchange, mortgage, and lease the whole or any part of any one of said haciendas, as may

187 be conducive to the furtherance of the principal purposes of its organization, in order to invest the proceeds in the acquisition of other real estate more appropriate to such purposes, or for the purpose of extending and perfecting its sugar manufactories. It may likewise sell or lease the tracts which form part of the said haciendas, providing at once for the purchase on easy terms of payment and at reasonable prices by such persons as have the same under lease; a resolution of the Board of Directors being sufficient to carry into effect the said partial acts and contracts of disposition, but a resolution of the general meeting being necessary for the sale or mortgage of more than one hacienda"; the President called for the reading of a portion of the minutes of the meeting held by the Board of Directors of the Company on the seventh of the present

month, relative to the resolution adopted in regard to the calling and holding of the present general meeting, and proposed that the meeting should, in the first place, consider the advisability of selling to the Civil Government of the Philippine Islands the eight haciendas possessed by the Company at the date of its organization by deed of January 29, 1900, and which are described in Paragraph 8 of said deed, and, in the second place, in the event of such sale being resolved upon, the determining of the conditions upon which such sale should be made.

Discussion being opened upon both points, and the general administrator, Don Francisco Gutierrez y Répide, being given the floor, stated that at the conferences held with the Civil Governor of the Islands, after the date of the last meeting of the Board of Directors, held the seventh instant, the agreement arrived at with the said Civil Governor was to the effect that the Company should sell its eight haciendas, reserving to itself one thousand hectares
188 of land, as follows: Ten to eleven hectares in the pueblo of Biñan, which are sold; ten hectares, odd, with the rice-hulling plant and a tract of one thousand two hundred and sixty-four square meters, twenty-two square decimeters and five square centimeters; one hundred and eighty-nine hectares in Santa Rosa, which the Company reserves to itself, together with the dwelling-house, storehouse, and land upon which same are situated, which said land is surrounded by a stone wall, for the purposes of cultivation, with the water necessary for the irrigation of the same; and eight hundred hectares in Calamba, together with the dwelling of one Majada and the storehouse now occupied by the American army, and the storehouse at Orion.

From these eight hundred hectares are to be deducted the tracts sold in the pueblos of Santa Cruz de Malabon and Calamba, as well as the sugar land also sold in said last-named pueblo. The price agreed upon is $3,336,657 gold, there having already been deducted the portion proportionate to the value of the thousand hectares of land, and the house at Santa Rosa, which the Company will reserve to itself. It was agreed that said payment should be made within from three to six months, the Government having assumed, by agreement with the representatives of the Order of Recoletos and the "Compañía Agrícola de Ultramar," and at the request of the Apostolic Delegate, the obligation to pay, in addition, for the account of said corporations, at the time of payment of the aforesaid sum, to this Company, the sum of $335,000, gold, which the said corporations have bound themselves to pay in the event of a sale of their haciendas being effected, said payment being dependent upon the Government's purchasing from them their haciendas, as appears in that portion already read of the minutes of the last meeting of the Board of Directors.

The points proposed for discussion having been sufficiently deliberated upon, and in view of the result of the discussion,
189 and of the voting had thereupon, the following resolution proposed by the President was adopted unanimously:

"The General Administrator, Señor Don Francisco Gutierrez

Répide, is hereby authorized to bring about the sale, in the name of the Company and upon the conditions above set forth as regards the eight aforementioned haciendas, and to that end to sign the agreement of sale and at the time fixed to execute the final deed of sale of the said haciendas, and at the same time to receive, for the account of the said Order of Recoletos and the said 'Compañía Agrícola de Ultramar,' the money to be paid by the Government as the purchase price of the aforesaid haciendas."

The foregoing minutes having been reduced to writing, same were read, approved and signed by all present; all of which, as Secretary, I certify.

FRANCISCO GUTIERREZ.
R. W. CONDE.
BARRY BALDWIN.
GERARD L. BALDWIN.
AGUSTIN SOSA Y SEÑO.

And I issue this certificate, which I have signed and sealed with the seal of the aforesaid Company, in Manila, the — day of April, 1904.

BALDOMERO DE HAZAÑAS, *President.*

[illegible]

190 EXHIBIT "H."

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG ET AL., Plaintiffs,
vs.
FRANCISCO GUTIERREZ RÉPIDE, Defendant.

Answer of Defendant to Order if the Court to Show Cause Why He Should Not be Punished for Contempt.

CITY OF MANILA, *Philippine Islands, ss:*

Francisco Gutierrez y Répide, being duly sworn deposes and says:

That he is the defendant in the above entitled action, and while excepting to and protesting against the order of this Court in the above entitled action of date January 14, 1904, requiring him to show cause why he should not be punished for contempt, upon the ground and for the reason that the said order is null and void in that it is not based upon any charge in writing against this defendant or upon any proper foundation, and that he should not therefore be called to answer or make any showing thereto, that he has never in any way desired, intended or attempted to violate, or fail to comply with to the fullest extent in his power, any order of this Court;

That he has read the complaint herein and is familiar with its contents; that excepting the allegations therein as to the status and

domicile of the parties to this action, that the plaintiff was at
191 one time the owner of some 800 shares of stock of the Philippine Sugar Estates Development Company, Limited, that this defendant was the general manager of the said Company, that the par value of the said shares is One Hundred Dollars Mexican currency, per share, that one F. Stuart Jones on or about the 10th day of October, 1903, had in his possession the said shares of stock, and believed in good faith that he had the right and authority to transfer the same, and that this defendant on or about the 10th day of October, 1903, knew or thought that he knew, that is to say, believed that the said shares were the property of the said plaintiff Eleanor Erica Strong, and that plaintiffs, or those whom this affiant believes represented them have demanded of him the return of the said shares, and that upon the service upon affiant of the order of this Court of date January 12, 1903, a person who affiant believes was the attorney at law of these plaintiffs offered affiant a check which was at the time stated to be in the sum of 16,000 pesos, and that affiant has refused to return the plaintiffs the said shares, and that the latter are transferable by delivery, which said allegations this affiant believes and therefore admits to be true, the said complaint and all the allegations contained therein are wholly, absolutely and unqualifiedly untrue.

And this defendant further answering the said rule and order under the objection and protestation first hereinabove made, says that the statement of his embodied in the return of the Sheriff of Manila to and upon the order of this Court of January 12, 1904, was and is true and correct; that this defendant was not then and is not now the owner of the said shares nor any part of them, and that the said shares nor any part of them have not been in
192 affiant's possession or control for more than two months past, and now are and were at the time of service upon affiant of the said order and long prior thereto, as affiant believes, in Spain.

FRANCO. GUTIERREZ.

Subscribed in my presence and sworn to before me this 14th day of January, 1904.

R. HERAS,
Assistant Clerk, Court of First Instance, Manila, P. I.

193 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

CITY OF MANILA, *Philippine Islands, ss:*

Francisco Gutierrez, being first duly sworn on oath, says: That affiant is the defendant in the above entitled action; that stock of the value of $150,000 in the Philippine Sugar Estates Development

Company, Limited, is the subject of the said action, according to the allegations of the plaintiff; that the said plaintiffs demand of the defendant, and in case the defendant cannot deliver said stock the plaintiffs claim the value thereof; that the proofs in said action were terminated the 21st day of April, 1904, before the Honorable Beekman Winthrop, Judge of First Instance; that at the present time the said action has not yet been decided by the said Judge Winthrop, who heard the proofs in said action; that affiant has just been informed, and believes it to be a fact, that the said Judge of First Instance, Beekman, Winthrop, on the 29th day of April, 1904, was present at a dinner given in the house of plaintiffs and for that reason affiant believes that the said Señor Beekman Winthrop cannot act with absolute impartiality in the cause between this affiant and the said plaintiffs Strong, with whom the Judge of First Instance has such intimate relations of friendship as to dine in
194 their house shortly before the time in which said action must necessarily be decided, for affiant understands that the said Judge of First Instance embarks tomorrow for America.

(Sgd.) FRANCISCO GUTIERREZ.

Subscribed and sworn to before me this 30 day of April, 1904. Affiant exhibited to me his certificate of registration No. 125320, issued by the Collector of Internal Revenue of Manila *in* April 8, 1903.

EDUARDO GUTIERREZ RÉPIDE,
Notary Public.

Term expires Jan. 1st, 1905.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

CITY OF MANILA, *Philippine Islands, ss:*

Francisco Gutierrez Répide, being duly sworn, says that he is the defendant in the above entitled cause; and that affiant is informed that judgment was rendered in the said cause on Friday, the 29th day of April, 1904, at 12 noon, against the defendant, for the return to plaintiffs of 800 shares of stock of the Philippine Sugar Estates Development Company, and in default of the return thereof, for the sum of $138,352.71, Philippine currency; that coun-
195 sel for plaintiffs on the afternoon of the rendition of said judgment and the delivery thereof to the Clerk, took the record in the said cause, including the judgment just rendered, from the Court house to his office; that Counsel for defendant were not notified of said judgment until about ten o'clock of the following day, and although Counsel for defendant made several inquiries at the office of the Clerk of the Court on the 30th day of April, 1904,

they did not succeed in learning the contents of said judgment, except by hearsay, until the following Monday.

That on Monday or Tuesday, the 25th or 26th day of April, 1904, Dr. R. P. Strong, one of the plaintiffs in the said suit, arranged at the Army and Navy Club in the city of Manila for a complimentary dinner to be given to the Honorable Beekman Winthrop, the trial Judge who rendered said judgment, such dinner to be given on the evening of Saturday, the 30th day of April, 1904; that the hearing of the said cause was terminated on the 19th day of April, 1904, and the said cause was argued before the said Judge on the 22nd day of April, 1904, and on the said 25th and 26th days of April, 1904, was undetermined, undecided and pending before the said Judge for his decision; that after the said dinner was so arranged for, invitations were issued thereto, and the same was held in honor of the said Judge at the said club on the night of Saturday, the 30th day of April, 1904, and that there were present, as guests at said dinner, including the said Judge, some 12 or 14 persons in the private dining room of the said Club;

Affiant is further informed, believes and therefore states that some two days before the said dinner, and at least one day before the said judgment in this cause was announced, there was printed for the said plaintiff a menu for the said dinner, and a copy of the said menu as used at said dinner is hereto attached and
196 marked Exhibit "A;"

Affiant is further informed, believes and therefore states that the expenses of the said dinner have either been paid by the said plaintiff or charged to his account at the said Club, and that affiant did not learn that such dinner had been either planned or given until Monday, the second day of May, 1904.

Affiant further states that on the night of Friday, April 29th, 1904, and on the same day on which this affiant is informed the judgment herein was signed by the said trial judge, a dinner was given at the home of the plaintiffs by the said plaintiffs in honor of the said judge, and affiant is informed, believes and therefore states that invitations thereto were issued and extended prior to the announcement by the said judge of his decision herein, and that at the said dinner there were present some ten persons outside of the family of plaintiffs, including among the guests, Stuart Jones, who was an important and material witness on behalf of plaintiffs at the trial of the said cause, being the person who sold for the plaintiff the shares of stock which are the subject of this controversy herein, and who, the said decision finds, was without authority to make such sale, and from whom the defendant claims the said shares were purchased in the full faith and belief that he had such authority.

And affiant further states that between the plaintiffs and the said trial judge there has existed for a long time the closest intimacy and social relations, of which this affiant had no knowledge until after the trial herein; that this cause was originally upon the docket, not of the Honorable Beekman Winthrop, who tried the same, but upon the calendar of the Honorable John C. Sweeney, and that on account

of the judgment rendered by the latter judge in certain contempt proceedings incidental to the said suit and which required the determination of certain questions that would be material upon
197 the trial of the main cause upon its merits, the said cause was upon the suggestion of counsel for defendant passed by the Honorable John C. Sweeney to another Judge, and that counsel for defendant and counsel for plaintiffs undertook to agree upon a judge who should try the said cause; that in the discussion preliminary to such action counsel for the plaintiffs indicated that he did not wish to try the said cause before a certain one of the judges of the City of Manila for the reason that the proceedings would there be conducted in the Spanish language, with which he was not familiar, and that the same counsel mentioned with regard to another of the trial Judges of the City of Manila another reason why in his opinion he should not try the said cause before the said judge, and asked counsel for defendant, in substance, if they would have any objection to trying the said cause before the Honorable Beekman Winthrop; that to this counsel for respondents replied that they knew of no objection and that thereupon counsel for both parties in open court asked the said Judge Winthrop, if, in case the cause should be passed to him by the said Judge Sweeney, he would be willing to try it, and the said Judge Winthrop thereupon replied in substance, that he would be very glad to try it, and indicated as a reason therefore that a change from the criminal causes which he had been trying would be very acceptable to him; that thereupon counsel repaired to the Court Room of the said Judge Sweeney, who thereupon made an order transferring the said cause for trial before the Honorable Judge Winthrop; and affiant says that during all these times neither he nor his counsel had any knowledge of the close and intimate personal and social relations which they have since learned existed between the said trial judge and the
198 plaintiffs, and that *they had* believed that such existed to the extent and manner in which they have since learned was the case, they would not have consented that the cause proceed to trial before the said Judge Winthrop;

And affiant says that by reason of the foregoing facts he verily believes that he has not had such a consideration of his case as the general principles of jurisprudence and American administration of impartial justice require.

(Sgd.) FRANCISCO GUTIERREZ.

Subscribed and sworn to before me this 3rd day of May, 1904. Affiant exhibited to me his certificate of registration No. 125320, issued by the Collector of Internal Revenue in Manila on the 8th day of April, 1903.

[SEAL.] EDUARDO GUTIERREZ RÉPIDE.
Notary Public.

Term expires on the 1st of January, 1905.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

Now comes the defendant in the above entitled cause, by his attorneys Hartigan, Marple, Solignac & Gutierrez, and excepts
199 to the judgment of the Court herein, and hereby gives notice of his intention to perfect a bill of exceptions for review by the Supreme Court of all the rulings, orders and judgment of the Court in the said action.

Manila, May 3, 1904.

HARTIGAN, MARPLE, SOLIGNAC & GUTIERREZ,
Attorneys for Defendant.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

Now comes the above named defendant, by his attorneys Hartigan, Marple, Solignac & Gutierrez, and respectfully moves the Court to set aside the judgment rendered herein, and to grant a new trial.

First, because the evidence in this case is insufficient to justify the decision rendered by this Court, because the findings are plainly and manifestly opposed to the weight of evidence in the said cause, and because the said decision is contrary to law;

Second, because of facts occurring during the trial of the
200 said cause and subsequent thereto materially affecting the substantial rights of defendant, and by reason of which the defendant has probably been impaired in his said rights, which facts are set forth in the affidavit herewith filed in support of this motion.

Manila, May 3, 1904.

HARTIGAN, MARPLE, SOLIGNAC & GUTIERREZ,
Attorneys for Defendant.

Statement of Rulings, Orders and Judgment Which Have Been Excepted To.

During the trial of the case, RICHARD P. STRONG, one of the plaintiffs, testified as a witness in his own behalf and in behalf of the other plaintiff, and was asked by his counsel the following question:

Q. When did you first know of any attempt on the part of anyone to purchase Mrs. Strong's stock?

To which counsel for defendant objected on the ground that the question was leading and calling for a conclusion of the witness, and was immaterial, irrelevant and incompetent and not tending to establish any issue in this case, and in no way being connected with the defendant; which objection the Court overruled and the defendant excepted, to the ruling of the Court.

During the trial of the case, ELEANOR ERICA STRONG, one of the plaintiffs, was called as a witness in her own behalf and in behalf of the other plaintiff, and by her own counsel was asked the following questions:

Q. What sort of authority did you give Mr. Jones, if any, to look after your affairs?

201 To which counsel for defendant objected on the ground that it was incompetent, calling for the contents of an authority that is presumed to be in writing, and not the best evidence and for the further reason that the question should be first, whether the authority was written or oral. Which objection the Court overruled, and defendant excepted to the ruling of the Court.

RICHARD P. STRONG, being re-called as a witness, was at the trial of the cause asked the following question:

Q. Did Mr. Gutierrez ever tell you of the condition of the negotiations between himself, as representative of the Philippine Sugar Estates Development Company, Limited, and the Government looking to the purchase of the lands of the Philippine Sugar Estates Development Company?

To which counsel for defendant objected as immaterial and irrelevant, and not tending to establish any issue of the case. The Court overruled the objection and defendant excepted to the ruling.

During the trial of this cause counsel for plaintiffs offered in evidence the document marked plaintiff's Exhibit "A," being a power of attorney executed by plaintiff Eleanor Erica Strong to Francisco Stuart Jones. To the admission of said document counsel for defendant objected on the ground that said document was irrelevant and immaterial. The Court overruled the objection and defendant excepted to the ruling of the Court.

At the trial of this cause, Mr. F. STUART JONES was called as a witness for the plaintiffs, and was asked by counsel for plaintiffs the following question:

Q. Did you know, or had you any reason to believe, that Mr. Sloan was representing Mr. Francisco Gutierrez Répide in that transaction?

202 To which question counsel for defendant objected on the ground that the same is incompetent and assumes a fact not proven, and that it is immaterial and irrelevant, and does not tend to establish any issue in the case. The Court overruled the objection and defendant excepted to the ruling of the Court.

The same witness, F. STUART JONES, was by counsel for plaintiffs asked the following question:

Q. What, if anything, did Dr. Strong or Mrs. Strong say to you at the time that you told them that the stock was sold?

To which question counsel for defendant objected as immaterial and irrelevant. The Court overruled the objection of the ground that it is material to show whether or not the contract was ratified. Defendant excepted to the ruling of the Court.

The same witness, F. STUART JONES, was by counsel for plaintiffs asked the following question:

Q. What effect, if any, would it have had upon the price at which you were willing to sell the shares, or your inclination to sell them at all, if you had known that the purchaser was Mr. Francisco Gutierrez Répide?

To which counsel for defendant interposed the following objection: Objected to as immaterial, on the ground that the witness cannot testify to that at the present time; if he did not know at that time, he cannot now say what effect it would have had upon him if he had known that Señor Gutierrez was the purchaser. Furthermore, it is absolutely immaterial who the purchaser was, or whether it was Señor Gutierrez or not, because Señor Gutierrez had the same right as any other citizen in the Philippine Islands to purchase this stock; and for the further reason, that under the law, Mr. Jones had no right to know from the broker who
203 the purchaser was, and it was the duty of the broker, under the law, to keep the name of the purchaser a secret, as provided for in the Code of Commerce. The Court overruled the objection and the defendant excepted to the ruling of the Court.

The defendant having answered the foregoing question as follows:

A. I should not have sold.

was by counsel for plaintiffs asked the following question:

Q. Why should you not have sold?

To which question counsel interposed the same objection, The Court overruled the objection and defendant excepted to the ruling of the Court.

MARCUS MCGREGOR was called as a witness for the plaintiffs and asked by counsel for plaintiffs the following question:

By whom were the negotiations conducted after July 5, 1903, with Governor Taft, or with the other members of the Civil Commission, in relation to the sale of these lands?

To which counsel for defendant interposed the following objection: Objected to as absolutely irrelevant and immaterial, except it be confined to negotiations between the Governor and the lands of the Philippine Sugar Estates Development Company, and even then it is incompetent as — does not tend to establish the value of the property in issue. The Court overruled the objection and the defendant excepted.

The same witness, MARCUS MCGREGOR, was asked by counsel for plaintiffs the following question:

Q. What was the offer you had from the Governor on which you undertook negotiations with these other owners?

204 To which question counsel for defendant interposed the following objection: Objected to as immaterial and irrelevant. This concerns another company entirely, and the authority of Governor Taft to make the offer not having appeared, and further, no authority for the offer has been shown, the offer must be in writing—and as not the best evidence. The Court overruled the objection and the defendant excepted.

The same witness, MARCUS MCGREGOR, testified at the trial that he had authority from his company, the British-Manila Estates Company, Limited, to accept offers for the lands owned by said company, and in answer to a question on cross-examination by counsel for defendant, answered as follows:

Q. With your company? How was it?
A. I was authorized to accept at a certain price.
Q. At a certain price from the stockholders?
A. From my chairman. I had my orders from the chairman of the British-Manila Estates Company, the President of the company.
Q. Communicated to you in writing?
A. Yes, sir.
Q. Have you got it here?
A. Yes, but I would rather not show it. It is private information.

Whereupon counsel for defendant asked the Court that witness produce said written authority, to which request counsel for plaintiff objected on the ground that private instructions to Mr. McGregor should not be called for. The Court denied the request of counsel for defendant, and defendant excepted.

At the trial of this cause counsel for plaintiffs read from the deposition of Governor Wright the following question:

Q. Do you know whether or not an offer was made by the
205 Philippine Government to the Philippine Sugar Estates Development Company, Limited, one of the owners of the lands, for their property, and if so, when said offer was made?

To which question counsel for defendant interposed the following objection: Objected to on the ground that the question is incompetent, because the value of the lands cannot be proven by an offer made for the same, and because if any such offer were made, it must necessarily have been in writing, and since it is an official act, the writing itself is the best evidence. The Court overruled the objection, and the defendant excepted.

From the same deposition of Governor Wright, counsel for plaintiff read the following question:

Q. At what stage were the negotiations looking to the purchase of these lands by the Government in the months of September and October, 1903?

To which counsel for defendant interposed the following objection: Objected to on the ground that the question assumes the existence of negotiations not yet proven to have existed during the months of September and October, 1903, and for the further reason that it is immaterial and does not tend to prove any issue in this case. Which objection the Court overruled, and the defendant excepted.

The defendant, having been called to testify by the plaintiffs, was by counsel for plaintiffs asked the following question:

Q. Are you a stockholder in the Philippine Sugar Estates Development Company, Limited, and if so, how many shares of stock do you own, and what is the par value of the stock?

To which counsel for defendant interposed the following objection: I object to the question for the reason that it is im-
206 material absolutely how many shares of stock Mr. Gutierrez owns or ever has owned. The Court overruled the objection, and defendant excepted.

Mr. Gutierrez was further asked the following question:

Q. What debts, if any, Mr. Gutierrez, did the Philippine Sugar Estates Development Company owe?

To which both the witness and counsel for defendant interposed an objection, on the ground that witness should not be compelled to reveal the affairs of the Company. The Court overruled the objection, and defendant excepted.

Referring to the amount of the debts of the Company, the defendant testified as follows:

Q. Within $100,000?
A. I don't know, the books will show; I can look into the books and under protest tell you.

To which counsel for defendant objected. Whereupon the Court

stated: I will direct the witness to get the information from the books and have it here this afternoon, the approximate amount of the company's debts. To which ruling the defendant excepted.

On the 29th day of April, the Court rendered judgment for the plaintiffs against the defendant for the sum of $138,352.71, Philippine Currency, and costs of suit, providing at the same time that the said judgment might be satisfied by the delivery to plaintiff, Eleanor Erica Strong, of the 800 shares of stock, the subject of this action, within forty days from the date of said judgment. To which judgment the defendant excepted.

On the 3rd day of May, the defendant moved the Court for a new trial on the grounds:

1. Because the evidence adduced in this cause is insuf-
207 ficient to justify the decision rendered by this Court, because the findings are plainly and manifestly opposed to the weight of evidence in the said cause, and because the said decision is contrary to law;

2. Because of facts occurring during the trial of said cause and subsequent thereto materially affecting the substantial rights of the defendant, and by reason of which the defendant has probably been impaired in his said rights, which facts are set forth in the affidavit herewith filed in support of this motion.

Manila, May 3, 1904.

HARTIGAN, MARPLE, SOLIGNAC & GUTIERREZ,
Attorneys for Defendant.

On the 9th day of May, 1904, the Court overruled the motion for a new trial, and defendant excepted.

I, Byron S. Ambler, Judge of the Court of First Instance of the City of Manila, hereby approve the foregoing bill of exceptions, and certify that the same contains all the evidence adduced at the trial of this cause.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 2365.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

To Messrs. Pillsbury & Sutro:

Take notice that on Monday, the 9th day of May, 1904, at 8 o'clock A. M., or as soon thereafter as counsel can be heard,

208 we shall call up for determination before the Honorable Byron S. Ambler, the motion for a new trial filed in this cause.

Manila, May 6, 1904.

HARTIGAN, MARPLE, SOLIGNAC & GUTIERREZ,
Attorneys for Defendant.

Received copy,

PILLSBURY & SUTRO,
Att'ys for Plaintiff.

May 6, 1904.

The foregoing notice filed this 9 day of May, 1904.

J. McMICKING, *Clerk.*

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 2365.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

William J. Rohde, being first duly sworn, deposes and says: that the Honorable Beekman Winthrop, the Judge who tried the above entitled cause, and rendered judgment therein, is not within the Philippine Islands, so that defendant's proposed bill of exceptions and defendant's notice of intention to present such bill of exceptions cannot be presented to the said Judge.

WM. J. ROHDE.

Subscribed and sworn to before me this 5th day of May, 1904.

EDUARDO GUTIERREZ RÉPIDE,
Notary Public.

My commission expires January 1, 1905.
Copy served on plaintiffs May 6, 1904.

The foregoing document filed this 5th day of April, 1904.

J. McMICKING, *Clerk.*

209 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 2365.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIÉREZ RÉPIDE.

It having been made to appear to the Court that the Honorable Beekman Winthrop, the Judge who presided at the trial of the above entitled action and rendered judgment therein, is not within the Philippine Islands, and it further appearing that the defendant has duly excepted to said judgment and has given notice of his intention to prosecute a bill of exceptions in this cause, it is therefore ordered that the defendant's exception to the judgment rendered in this case is hereby allowed; and it is further ordered that a memorandum of plaintiff's intention to prosecute a bill of exceptions be entered upon the minutes of this Court, and also, that a memorandum of said intention to prosecute a bill of exceptions be entered upon the docket of this Court among the other entries relating to the action.

B. S. AMBLER, *Judge.*

Manila, May 5, 1904.
Copy of the foregoing decision delivered to plaintiffs.
Manila, May 6, 1904.

The foregoing document filed this 5th day of April, 1904.

J. McMICKING, *Clerk.*

210 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

Civil Case No. 2365.

ELEANOR ERICA STRONG, Formerly ELEANOR ERICA ANDREWS, and RICHARD P. STRONG, Her Husband, Plaintiffs,
vs.
FRANCISCO GUTIÉRREZ RÉPIDE, Defendant.

Come now the plaintiffs, by their attorneys, Pillsbury & Sutro, and ask the court to strike from the record paragraph designated "Second" contained in the motion to set aside the judgment and grant a new trial in the said cause; also to strike from the record the affidavit of Francisco Gutiérrez Répide, the defendant, accompanying said motion and made in support of the said second paragraph; also to strike from the record the affidavit of Francisco

Gutiérrez filed on the 30th day of April, 1904: upon the ground that the same are improper and have no place in the record.

Manila, P. I., May 9, 1904.

PILLSBURY & SUTRO,
Attorneys for Plaintiffs.

Received copy.
HARTIGAN, MARPLE, SOLIGNAC & GUTIÉRREZ.

211 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ REPIDE.

This cause coming regularly on to be heard, on motion of the defendant for a new trial, the Court having heard the argument of counsel for defendant, and being fully advised in the premises, does hereby overrule the said motion for a new trial, to which ruling the defendant then and there excepted.

Manila, May 9, 1904.

B. S. AMBLER, *Judge.*

Thereupon the defendant presented to this Court his bill of exceptions in this cause, and the plaintiffs asked and were granted until Monday, the 16th day of May, 1904, to file their amendments to the said proposed bill of exceptions of the defendant.

Manila, May 9, 1904.

B. S. AMBLER, *Judge.*

212 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ REPIDE.

Now come the above entitled plaintiffs, by their attorneys, Pillsbury & Sutro, and suggest the following amendment to the proposed bill of exceptions presented by the defendant herein:

"That there be added to the said proposed bill of exceptions as a part of the bill of exceptions to be settled herein, the original answer of the defendant to the complaint of plaintiff, said answer being found on pages 59 and 60 of the record in the said cause."

Manila, June 30, 1904.

PILLSBURY & SUTRO,
Attorneys for Plaintiffs.

213 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG, Formerly ELEANOR ERICA ANDREWS, and RICHARD P. STRONG, Her Husband, Plaintiffs,

vs.

FRANCISCO GUTIERREZ REPIDE, Defendant.

Now comes the above named defendant, and for his answer to the complaint herein, says:

1. That he admits the allegations contained in the said complaint as to the status and residence of the plaintiffs and defendant, and that at the time stated in the complaint the plaintiff Eleanor Erica Strong was the owner of 800 shares of stock therein referred to, of the par value of $100.00, Mexican currency, per share, and that this defendant knew or believed the said shares to be at such time the property of said plaintiff; that at the said time the F. Stuart Jones referred to in said complaint had such shares of stock in his possession, and that he had at the time full right and authority from the said plaintiff to transfer the said shares, and that the same are and were transferable by delivery; and denies each and every allegation in the said complaint except as hereinabove specifically stated and admitted;

2. And further answering the said complaint, said de-
214 fendant says that on or about the 10th of October, 1903, the said plaintiff Eleanor Erica Strong and her duly authorized attorney in fact, the said F. Stuart Jones, for her and in her name, place, and stead, transferred, sold, and delivered the said 800 shares of stock, payable to bearer, and transferable by delivery, with the intervention and by means of their regularly appointed and duly authorized commercial broker in the City of Manila to one Kaufman, who afterwards sold and conveyed the same to this defendant.

Wherefore this defendant prays that he may go hence without day and recover his costs and damages herein sustained.

Manila, February 25, 1904.

HARTIGAN, MARPLE, SOLIGNAC & GUTIÈRREZ,
Attorneys for Defendant.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,

vs.

FRANCISCO GUTIÉRREZ RÉPIDE.

Affidavit.

Charles H. Marple, being sworn, says: That he is one of the attorneys for the defendant herein; that on the day after that upon

which the complaint herein was filed, namely, on January 13th, 1904, an order was issued by the Honorable John C. Sweeney,
215 one of the Judges of the above entitled Court, requiring the defendant to show cause why he should not be punished for contempt of court in not having delivered to the Sheriff of Manila the certain 800 shares of stock referred to in the complaint herein, and that on January 18, 1904, the said Judge entered a judgment by the terms of which said defendant was adjudged to be in contempt of court, and was ordered to be imprisoned in Bilibid Jail until he should deliver to the Sheriff of Manila the said shares of stock; that affiant, as attorney for the said defendant, and as such entrusted with the conduct of his defense herein, was almost continuously occupied from the day of filing the said complaint until and for some time after the 25th of February, 1904, so far as this case is concerned, with the defense of the said defendant in the said contempt proceedings, and in obtaining relief against such by-proceedings instituted in the Supreme Court; that as a result thereof affiant, at the time of filing the original answer to the original complaint herein, that is to say, on February 25, 1904, had only slightly and superficially examined into the merits of the controversy between plaintiffs and defendants herein, and was not thoroughly informed as to such, and that the said original answer was prepared by affiant hurriedly and without his being fully informed as to the real facts, and filed at the time because affiant was informed that the defendant was in default of an answer and that it was the intention of plaintiffs to at once move for a judgment.

Affiant further says that the said answer was prepared by him upon his recollection of the testimony previously adduced in the contempt proceedings and from the exceedingly meager talk which he had had with the defendant upon the merits of the controversy; that the said answer so prepared and filed was never sub-
216 mitted or shown to the defendant, and that defendant was never acquainted with its contents and never saw the same nor any part thereof, nor the substance thereof; and affiant further says that upon entering upon the trial of this cause counsel for plaintiffs read to the Court, as explaining the issues of the cause, first, the complaint of the plaintiffs and the amendment thereto, and then that answer of the defendant to the complaint as so amended and which was filed on April 12, 1904, and made no reference whatever, by reading or otherwise, to the said original answer filed on February 25, 1904, and that during the trial of this cause no reference whatever, either in argument or otherwise, was made to the said answer of February 25, 1904, but the said cause was tried throughout upon the complaint and the amendment thereto of the plaintiffs and the answer of defendant of April 12th, without any reference to the original answer of February 25, 1904, which throughout was treated as being substituted by the said answer of April 12, 1904

And affiant further says that the amendment suggested by the plaintiff to the proposed bill of exceptions presented by the defendant to the effect that the answer of February 25, 1904, should be

made a part of the said bill of exceptions herein, ought not to be favorably considered but should be overruled.

CHARLES H. MARPLE.

Subscribed and sworn to before me this 30th day of June, 1904.

[SEAL.] EDUARDO GUTIERREZ RÉPIDE,
Notary Public.

My Commission expires January 1, 1905.

217 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband,
vs.
FRANCISCO GUTIERREZ RÉPIDE.

On this 30th day of June, 1904, appeared before the Honorable Manuel Araullo, Judge of the said Court, counsel for plaintiffs and defendant in the above entitled cause;

And it appearing that the Honorable Beekman H. Winthrop, the Judge who tried the said cause, and the Honorable Byron S. Ambler, the Judge before whom the defendant herein presented his bill of exceptions, are both absent from the Philippine Islands, the said proposed bill of exceptions, together with the amendment thereto suggested by the plaintiffs, was, by the consent and agreement of counsel, in open Court made, called up for disposition and settlement, and I, Manuel Araullo, Judge of the said Court, hereby approve, settle and allow the foregoing bill of exceptions and certify that the same contains all the evidence adduced at the trial of this cause.

Manila, June 30, 1904.

MANUEL ARAULLO, *Judge.*

Conformes:
PILLSBURY & SUTRO.

218 I, José McMicking, Clerk of the Court of First Instance of Manila, certify that the foregoing bill of exceptions, consisting of 227 pages, is the original bill of exceptions filed by the appellant and approved by this Court.

In witness whereof, I sign these presents in Manila, this first of July, 1904.

J. McMICKING, *Clerk.*

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 1st day of July, 1904.

J. E. BLANCO, *Clerk,*
By H. D. McGEORGE, *Deputy.*

And thereafter, at a regular term of the Supreme Court of the Philippine Islands, begun and held at Manila, in the Philippine Islands, on the second Monday of January, nineteen hundred and

six, at which there were present the Honorable C. S. Arellano, Chief Justice, and the Honorable Associate Justices Victorino Mapa, Florentino Torres, E. Finley Johnson, A. C. Carson, Charles A. Willard and James F. Tracey, Mr. J. E. Blanco, Clerk, and others, to wit, on the eighteenth day of January, nineteen hundred and six, the same being one of the regular juridical days of said January, nineteen hundred and six, term of said Court, said cause having theretofore been regularly set for trial, came Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs and appellees herein, by Kinney, Odlin & Lawrence, their attorneys; and Francisco
219 Gutierrez Répide, defendant and appellant herein, by Hartigan, Rohde & Gutierrez, his attorneys, also came, and said cause was heard upon the bill of exceptions and briefs theretofore filed therein; and the arguments of the respective counsel having been heard, the Court took said cause under advisement.

And thereafter, to wit, on the twenty-eighth day of April, nineteen hundred and six, the same being one of the regular juridical days of said January, nineteen hundred and six, term of said Court, at which were present the Honorable C. S. Arellano, Chief Justice, and the Honorable Associate Justices Victorino Mapa, Florentino Torres, E. Finley Johnson, A. C. Carson, Charles A. Willard and James F. Tracey, Mr. J. E. Blanco, Clerk, and others, said parties being present by their respective attorneys, and the Court, being fully advised in the premises, rendered a decision which reads in words and figures as follows, to wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellees,

vs.

FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

April 28, 1906.

General Register No. 2101.

Decision Book 8, f. * * *

Tried January 18, 1906.

Present: Hon. Chief Justice and Magistrates Torres, Mapa, Johnson, Carson, Willard and Tracey.

Decision.

TRACEY, *J.:*

This action was brought to recover eight hundred shares of the capital stock in the Philippine Sugar Estates Development Company, Limited, an anonymous society formed to hold the Dominican Friar Lands.

The shares were the property of one of the plaintiffs, Mrs.
220 Strong, as part of the estate of her first husband, and we shall for clearness hereinafter apply the word plaintiff to her alone. They were purchased by the defendant through a broker who dealt with her agent, one Jones, who had the script in his possession and who made the sale without the knowledge of the plaintiff. The defendant was a director, was the managing agent and was in his own right the majority stockholder of the society.

The plaintiff proceeds on two theories:

First. That her agent had no power to sell or deliver her stock in the Philippine Sugar Estates Development Company, Limited; and

Second. That its sale, through her agent, was procured by fraud on the part of the defendant.

The script was payable to bearer and had, ever since its issue, been in the possession of one Jones, who was acting gratuitously as agent for the plaintiff, not only under a written power special in terms to collect money, but also as general agent managing all her business under a parol employment, the precise terms of which are not in evidence. He held other securities for the plaintiff and had on one prior occasion, at least, without special instruction, sold another of her stocks, understanding that the act was within the scope of his general agency.

By Article 1712 of the Civil Code the nature of general and special powers is defined. Article 1713 reads:

"An agency stated in general terms only includes acts of administration. In order to compromise, alienate, mortgage, or to execute any other act of strict ownership, an express mandate is required."

Such a mandate may be either oral or written, may stand by itself or may be included in the general power; the one vital thing being that the right to sell shall be express or shall be a necessary ingredient
of the power that is expressed (Fuzier-Herman Repertoire,
221 Title "Mandat", Arts. 153, 166, 167, 175 and 176). The only express commission in evidence to dispose of this or any stock is found in an interview between the plaintiff and Jones on the Luneta, in Manila, before this negotiation, in which she told him, speaking of her shares, "not to part with them until I got their face value." This bald statement is the only evidence on this point. If in its negative form it is sufficient to constitute an express or special power to sell, it can not be severed from the limitation as to price bound up in the same sentence with it; the limitation is as much a parcel of the grant as if both had been found in one written instrument, and one part can not be given effect without the other, unless one part only was brought to the knowledge of the defendant. There is no claim that he ever heard of this conversation. The sale was, in fact, made at a price much under par. While, however, this in themselves barred from operating as constating terms of a grant of power, yet the words have their effect as evidence of a pre-existing power understood between the parties, to which they plainly refer. In our judgment, however, even when taken in connection with the other facts, in the case, they do not sufficiently define the power. The sale by Jones of another stock at another time, his

possession of the shares and the reference of the broker to him by the plaintiff's husband, add force to them. But all these things fail to reveal the terms of the preexisting power; it may have been general or special, it may have been express, but on the other hand it may have been, as indicated by the evidence, merely assumed by the plaintiff and Jones to follow as a matter of course, from his general power of administration. This would lead to the very assumption prohibited by Article 1713. It is also apparent that the
222 general management of the plaintiff's property did not necessitate incidentally the sale of stock. We fail to find, therefore, proof of an effective power given Jones to dispose of this stock. The difficulty with this branch of the case is the scantiness of the evidence; the documents have been destroyed and the declarations of the parties are brief and it would be impossible to imply an express power from them, without assuming facts of which no sufficient evidence exists.

These principles are established in the civil law of Europe, as well as the common law of America, that acts of agents, beyond the limitation of their power, are null; that third persons deal with them at their peril and are bound to inquire as to the extent of the power upon which they rely; that where neither the actual power nor the appearance of it, for which the principal is responsible, exists, a third party is not protected without such inquiry. In this case the defendant is not shown to have made any inquiry whatever, but apparently relied unquestionably upon Jones' assumption of authority and took his risk in so doing.

It is urged, however, that we should apply the doctrine known in American jurisprudence as "estoppel," whereby a party creating an appearance of fact which is not true, is held bound by that appearance as against another person who has acted on the faith of it. A similar doctrine finds place in the Civil Law. By Article 1989 of the French Code, corresponding with Article 1719 of our Civil Code, it is provided that an agent can not do anything beyond the limit of his power. In commenting upon this law, Dalloz, after laying down the admitted proposition that the acts of an agent beyond his limited powers are null, states three qualifications whereby the principal is held bound:

223 First. Where his acts have contributed to deceive a third person in good faith;

Second. Where the limitations upon the power created by him could not have been known by a third person; and

Third. Where he has placed in the hands of the agent instruments signed by him in blank. (Jurisprudence Generale, Vol. 10, Title "Mandat," Article 142.)

The negotiations for this stock was opened with a written inquiry, from defendant's agent, through a broker named Sloane, whether the shares were for sale. In reply, in a letter written by plaintiff's husband, he was referred to Jones, with whom he was directed to consult, "as he had the shares in his possession." The letters were not produced and it is not clear whether the inquiry was addressed to the plaintiff or to her husband. The latter testified that it was made known to her, but not so the fact of the reference to Jones.

In all this there is nothing at variance with either theory; while the reference may have been made with a view to a sale, it was not inconsistent with the office of Jones as the general administrator and the advisor of the plaintiff, and is by the plaintiff's husband stated to have been a direction to consult and not to negotiate. Had the defendant made inquiry, as was incumbent on him, as to the extent of the agent's powers, he might not have been enlightened by Jones, who understood that his general administrative authority covered a sale; and he, however, required the production of the existing written power of attorney from the plaintiff, that, upon inspection, would have been sufficient to send him for further assurance to the grantor of the power and no misunderstanding could have arisen. The defendant knew who the principal in the
224 case was, as he commissioned his agent to buy this particular stock for him and the broker thereupon applied to the plaintiffs. For these reasons we can not find in the proofs, either acts contributing to deceive the defendant or limitations upon the power of the attorney which could not have been made known to him. Now do we discover the third qualification of the general rule stated by Dalloz. In the commentators and jurisprudence of the civil law it is uniformly required that to bring this doctrine into operation, the instrument to be negotiated shall be signed in blank by the owner. (Fuzier-Herman, Title "Mandat," 712.)

In this instance the securities, although payable to bearer and negotiable, were not signed in blank; the distinction is obvious, the reason for the rule resting in the fact of the signature expressing an affirmative intention on the part of the owner that the agent shall have the disposition of the securities. Where the instrument is by its terms at the outset payable to bearer there is no such expression of intention and the possession of such an instrument is consistent with the mere power of management. Moreover, the defendant was aware that Jones had long had these shares of stock in his possession for the purpose of voting at meetings of stockholders. Consequently the defense of estoppel fails.

It is also contended that the defendant was protected in his purchase by the provisions of the Code of Commerce. This stock was, pursuant to the charter of the company, payable to bearer and was therefore transferable by delivery. (Code of Commerce, Arts. 165 and 545). The third subdivision of Article 545 provides in relation to such securities:

"They are not subject to restitution if negotiated on exchange, with the intervention of a licensed agent, and where there is no such agent, with the intervention of a notary public or a person discharging his duties, or a commercial broker."

225 The effect of this provision is to confirm the title and transfer of even lost or stolen securities, except where the owner protects himself by the procedure provided in a subsequent section of the code.

We may take judicial notice of the fact that there is no "exchange" in the Philippine Islands, as indeed is plain from the various Articles of the Spanish Code of Commerce, specifically made applicable to these Islands. There is high authority, as well as

cogent reason, for the construction of this article which enables a commercial broker to act wherever there is no exchange. (See Opinion of the Supreme Court of Justice, May 30, 1895, Gaceta de Madrid, September 10, 1895.)

Sloane, through whom this sale was made, testified that he was a general broker and kept books under the Code of Commerce. There is no proof that he had ever held a commercial license, or that there was in Manila or in the Islands any association of commercial brokers that could have licensed him as such. The office is a technical one of special power and privilege created under Title VI of Book I of the Code of Commerce, calling for strict proof of the conditions of its existence. Even if the character of this broker had been given him by a proper license under the Spanish system, the evidence fails to show it. There is nothing before us requiring us to declare the present effect of this Article of the Code.

Although our conclusion of this branch of the case entitles the plaintiffs to recover, we deem it opportune to consider the second cause of action, based upon the affirmative conduct of the defendant, alleged to be fraudulent. The Civil Code provides that consent gained by deceit shall be void (Article 1265) and that there is deceit when by "insidious machinations" a person is induced to execute a contract. (Article 1269.)

226 The machinations with which the defendant is charged consist in the suppression of his identity while negotiating for the stock and when paying for it and also of his intention as majority stockholder in the company to close the negotiation then pending with the Government for the sale of the Friar Lands owned by the Company. The prospect of such a sale would have materially affected the price of the stock. This negotiation and the defendant's management of it in behalf of the vendors was known to Jones and had been for some time a matter of public notoriety and newspaper comment in the Islands.

Neither the plaintiff nor her agent applied to the defendant for information or communicated with him in any way. Nor is the defendant shown to have put forth statements, either in public or in private, for the purpose of influencing the sale.

In the action of the defendant we find nothing not permissible as against a holder of stock for sale, unless a peculiar duty on his part arose by reason of his office in the association, which was an anonymous society formed in the year 1900 under the Code of Commerce. He was its managing director and conducted these transactions without formal authorization by his society, but after informal discussion at the directors' meeting. He was also in person the holder of a large majority of the stock, thus not only controlling the process of the treaty with the Government through all its stages, but also its ultimate result by his own vote in the shareholders' meeting.

Did his knowledge of what was being done and what would be done incapacitate him in dealing with a fellow stockholder not so enlightened? Was he in duty bound to disclose either his information or his intention or even his identity?

On this point counsel have discussed quite fully the American

cases on corporation law. The question has been answered
227 in conflicting senses in the United States. In two decisions cited by the appellee, it has been held that a director and majority stockholder must disclose his information to another stockholder before buying stock from him; that such information is an asset of the company and that the relation of a director to a member of the company is that of trustee, not only in respect of corporate property directly under his control, but also of the individual stock in the hands of the member.

Oliver *vs.* Oliver, 118 Ga. 362; 45 S. E. Reporter, 232.

Stewart *vs.* Haynes, Supreme Court of Kansas, 77 Pacific Reporter, 277.

Such does not appear to be the older doctrine, which is quite to the contrary. The cases are collected in Deaderick *vs.* Wilson, 67 Tenn. 108 and in Commissioners *vs.* Tippecanoe Co., 44 Ind. 509.

In Smith *vs.* Hurd, 12 Metcalf, 371, the Massachusetts court denied the legal privity of directors with shareholders.

In Slee *vs.* Bloom, 20 Johns (N. Y.) 669, it was ruled that they are not trustees for the individual stockholders.

In Rothmiller *vs.* Stein, 143 N. Y. 581, directors were held liable for false information as to solvency furnished inquirers who, in reliance on it, had foreborne to sell their stock to advantage. The duty of a director and the qualification of the rule of *"caveat emptor"* are laid down in the opinion of Judge Peckham.

In Richey *vs.* M'Mullen, 79 Fed. Rep., 522, Northern Ohio Circuit, Judge Taft rested the liability of director to a shareholder, not upon his general duty as director but upon the special relation, on the facts before him, as pledge of the stock, creating a privity between them. In reviewing an English decision where the
228 company managers had conspired to conceal facts in order to effect the purchase of the plaintiff's stock, Judge Taft says:

"In the case cited the liability arose because of the relation between the corporate managers and stockholder of vendees and vendor of the stock. In the case at bar it arises because of the relation between the corporate managers and the stockholders of pledgee and pledgor of the stock."

These American cases are instructive as throwing light on the controversy over the duty of corporate managers to members, but the litigation before us must be controlled by the principles of our own civil jurisprudence. While up to a recent date we have had no private corporations, so termed in our statutes, we have their likeness in anonymous societies or partnerships. The essential concept of a corporation is a legal entity endowed with succession of membership and merging in itself the primary individual liability and right of the associates. All of these qualities are possessed by anonymous societies. Individual liability is completely extinguished; the membership is determined by ownership of stock and the administrators are chosen by stockholders. They are declared to be mandatories of the society, (Code of Commerce 156) and they are also responsible to the individual stockholders. (Dalloz Société, Arts. 1499 and

1539). But nowhere do we find their responsibility extended beyond the corporate property actually under their control. It is not suggested that they owe any duty to the members in respect of their individual stock, which is fully recognized as separate property, whose character and transmission is provided for in laws peculiar to it. This appears to be the limit of their responsibility under the laws governing this case. Article 1459 of the Spanish Civil Code reads:

"The following persons can not acquire by purchase, even at public or judicial auction, either in person or by an agent:

"1. The tutor or protutor, the goods of the person or persons who are under his tutelage.

229 "2. Mandatories, the property with the administration or alienation of which they have been charged."

See Manresa's Commentary on this Article, Vol. 10, page 100.

Their accountability is thus expressly confined to property "with the administration or alienation of which they are charged." They are not charged with the administration or alienation of the shares in the hands of members, and in respect of them they are not mandatories and hold no trust relation to the owners.

The members have no title to the corporate property as such, which, on the contrary, is distinct from the shares held by them. The right of the associate in a society is only in effect the right to an interest remaining after liquidation and not an actual and active ownership in the objects which compose the social property. (Fuzier-Herman Société, Art. 502. See also Arts. 475 and 505).

Consequently the defendant violated no duty in not communicating to the plaintiff his purpose in buying her shares and has been shown guilty of no fraud.

It is not entirely clear from the evidence whether the claim of the defendant that he bought the plaintiff's stock not in his own right but in behalf of his brother in Spain, to whom it was forwarded, has been abandoned or not. It appears to be assumed and was conceded by counsel on argument that the purchase was made for himself and it has been so treated in this opinion. If, however, the purchase was for the benefit of his brother, that might affect any obligation that he might have been under arising out of the office of administrator of the society, but it could not avoid the failure of title to the stock by reason of a lack of power in the agent who undertook to

230 sell it. Knowledge on the part of the defendant would have bound his principal under such a general commission.

The decision of the Court of First Instance is sustained on the first ground stated, although not on the second, and the direction for judgment therein is hereby affirmed, and after a period of twenty days judgment will be entered in accordance with this decision.

So ordered.

(Signed) JAMES F. TRACEY.

We concur:

(Signed) FLORENTINO TORRES.
" CHARLES A. WILLARD.

Mr. Justice Johnson took part in the trial and in the voting, and concurred in the disposing part of the foregoing decision. Mr. Justice Carson took no part.

(Signed) J. E. BLANCO,
Clerk Supreme Court, P. I.

We regret that we are constrained to dissent from the brilliant and well-reasoned decision of the majority. It is beyond a doubt conclusive from the principal point of view from which the question has been considered. A contract executed by an agent without the previous authorization or subsequent ratification of the principal is unquestionably void. An act of conveyance by an agent without the express authority of the principal is prohibited by our law.

But the essence of the question appears to us to be different. It appears to us that the first purchaser did not deal with the
231 vendor as though the latter were an agent, or, if he was under this impression, it is not clear that the previous authorization of the principal was not given to the agent.

Kauffman, the first purchaser, addressed himself to the broker, Mr. Sloan. The latter, in turn, applied to Mr. Strong, the second husband of Mrs. Eleanor Erica, formerly the wife of Mr. Andrews, the original owner of eight hundred shares of the "Sugar Estates Development Company, Limited". Mr. Strong referred Mr. Sloan to Mr. Jones, so that he might deal with the latter. Mr. Sloan and Mr. Jones had the matter under consideration for some three weeks. Mr. Sloan made several proposals to Mr. Jones until finally, after this not inconsiderable lapse of time, a price was agreed upon, and the contract was perfected in the office of the broker, Mr. Sloan, and consummated by the delivery by Mr. Jones and Mr. Kauffman respectively of the stock and of the price. This was on the 10th of October, 1903. The remaining days of October, and all of November and December, passed. All the parties were present in this city —Mr. and Mrs. Strong, Messrs. Jones, Sloan and Kauffman. During this period Kauffman had sold the stock to D. Francisco Gutierrez, the second purchaser.

The complaint was not presented until the 12th of January, 1904, and then not by the vendor, Jones, against the purchaser, Kauffman, but by Mr. and Mrs. Strong, who allege that their relations with Mr. Jones were those of bailor and bailee, and agent and principal; but against whom, nevertheless, they have not brought their action, but against a third person, who has had no relations whatsoever with Mr. and Mrs. Strong. And this action is brought by them against a stranger,—not against the only person who would be responsible to them for damages, if any, from which an action concerning the stock alleged to be the object of the bailment and agency might
232 arise,—and they allege as to this third person, who is Gutierrez instead of Kauffman, that he acted fraudulently, thereby, as they allege, vitiating the sale; and it is upon this aspect of the case principally that the Judge below entered his decision, which is in part as follows:

"The Court, therefore, declares that the purchase of these shares

of stock by the defendant is fraudulent and void, and it is ordered by the Court that the same be set aside and for nothing held. The present value of each share in the Philippine Sugar Estates Company appears to be One Hundred and Ninety Pesos and Sixty-four Centavos, Philippine currency. This calculation is arrived at as follows: The lands of the Sugar Estates Company were sold for the sum of $8,671,657, the other companies conceded to the Sugar Estates Company the sum of $335,000, making a total of $4,006,657, United States currency, received by the Sugar Estates Company by the sale of these lands. The liabilities of the Company appear to be indefinite, but appear to be fully covered by the hacienda reserved from the sale. The Court will, therefore, regard the liabilities as offset by this tract of land in rendering its decision: 42,030 shares of the Sugar Estates Company were issued, which would, therefore, make the value of each share amount to $95.32, United States currency. The 800 shares in question would, therefore, amount to $76,256, United States currency, or $152,512, Philippine currency. From this amount must be deducted the sum of $16,000, Mexican currency, which the defendant paid to Mr. Jones, and which has been deposited by Mr. Jones to the credit of the plaintiff. No evidence as to the value of Mexican currency was introduced at the trial, and reducing this amount to Philippine currency, as required by law, the Court must take knowledge of the rate of exchange fixed by authority of the Government, which at the present date is 1.13. $16,000 Mexican currency would therefore amount to $14,159.29, Philippine Currency. This amount deducted from the value of the 800 shares of stock would leave $138,352.71, Philippine currency.

"It is therefore ordered by the Court that the plaintiffs recover of the defendant the said sum of $138,352.71, Philippine Currency, and the cost of this suit. It is further ordered by the Court that the above judgment may be satisfied by the delivery to the plaintiff, Eleanor Erica Strong, of her said 800 shares of stock, within forty days from this date, in which event the plaintiff will pay to the defendant $16,000, Mexican currency, or its equivalent in Philippine Currency. It further appears to the Court that eight hundred shares of said stock, the property of the defendant, has been attached in this case, and now in the hands of the Sheriff of the City of Manila. It is therefore ordered by the Court that in the event that judgment herein rendered is not satisfied on or before the expiration of forty days from this date that the said Sheriff of the City of Manila, P. I., sell said 800 shares of stock so attached, after advertising, as required by law, and apply the proceeds to the payment of the above rendered judgment and all costs.

"Manila, P. I., April 29, 1904.

(Signed) BEEKMAN WINTHROP, *Judge.*"

233 This judgment cannot possibly be affirmed.

All the acts which have given rise to this litigation having been effected under the laws of the Philippine Islands, in accordance with these laws must the case be determined.

Even supposing that a judgment might be rendered against the

defendant, we cannot see how, in a revindicatory action, which presupposes the obligation to deliver a specific thing, a judgment for the payment of a certain sum of money,—which is peculiar to obligations which consist in the performance of some act,—can be entered primarily. The revindicatory action, the subject of which must be some specific and determinate thing, should in this case be limited to the 800 shares which, in their series and according to the stub book, were issued, although payable to bearer, in favor of Mrs. Eleanor Erica Strong's first husband. These shares should be specified in the complaint, as everything not generic should be specified. To this end the Code of Commerce prescribes that shares of mercantile companies shall be enumerated and extended in stub books (Art. 163), and to the same end it is prescribed by the same Code that in case of loss "the owner should indicate the name, the nature, the nominal value, the number, if any, and the series of the certificates." (Art. 549). In a revindicatory action the first thing to be determined is the thing which should be delivered up in case of a judgment against the defendant, and only subsidiary and in defect of such delivery can judgment be entered for the value of the thing which is considered as standing in its stead. Furthermore, even supposing that that which stands first in the judgment were that which should, according to law, stand first and not merely optionally, as would appear from the terms of the judgment, it is impossible
234 to affirm the first conclusion of the judgment, to the effect that the plaintiff recover from the defendant the sum of P138,352.71, Philippine Currency, as there is no allegation in the complaint, nor has any evidence been offered at the trial, upon which to base such a finding. Nor is it possible to accept as a basis of a final decision the assertion that "the actual value of each share of the Philippine Sugar Estates Development Company *appears* to be P190.64, Philippine Currency," followed by calculations which are neither alleged by the plaintiffs in the complaint nor during the course of the trial have been agreed to, or even proven.

But disregarding this feature of the judgment, it is of importance to examine the reasons upon which the decision is based.

1. Fraud or deceit, and the lack of an express authority on the part of the selling agent, are the two legal grounds established in the judgment appealed.

(*a*.) Fraud.—In the decision we find no other reasoning than this: "Art. 1263 of the Civil Code provides: 'Consent given by reason of error, violence, intimidation, or fraud, shall be void.' Article 1269: 'Deceit exists when, by means of insidious words or machinations on the part of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have made.' The Court believes that the acts of the defendant in concealing what he was under an obligation to reveal, and in adopting the measures which he did adopt to carry the concealment into effect, are equivalent to insidious machinations." (Bill of Exceptions, p. 14.)

It is absolutely impossible for this Court, in reason and justice, to subscribe to this reasoning. In the first place, deceit, according

to the article cited, No. 1269, must be some positive act,
235 *insidious words or machinations,* "which include false promises, the exaggeration of hopes or benefits, the abuse of confidence, the use of pretended names, qualities, or powers, the thousand forms, in fine, of deceit, by which one may be misled and a vitiated consent obtained, without its being necessary that such proceedings constitute 'estafa' or otherwise fall within the domain of the Penal Code." (Manresa, Vo. 8, page 623.)

Throughout the course of this trial no evidence has been offered of any fact tending to show that the vendor, Jones, was in any way misled for the purpose of obtaining from him consent which he would not otherwise have given. This appears from the decision itself; the supposed deceit consisted in refraining from revealing facts which should have been revealed. In the second place, the judge's decision does not state who was the deceiver and who was the deceived. The contracting parties were Kauffman and Jones. Even if we take it for granted that Kauffman contracted as a go-between for Gutierrez, between Kauffman or Gutierrez as purchaser and Jones as vendor there was a perfect meeting of minds as to the purchase of the 800 shares in consideration of the sum of 16,000 pesos, through the mediation of the broker, Sloan, in whose office the contract was entered into and executed. Against the consent so given no allegations have been made by Jones or anyone else that it was vitiated by deceit, for no one attempted to deceive him by means of insidious words or machinations, nor does it appear that anyone was deceived by such words or machinations. It is absolutely impossible to adopt the conclusion that Kauffman or Gutierrex or Sloan had made use of insidious words or machinations of such character
that they influenced Jones' mind so as to obtain from him
236 a consent which without them would not have been given.

It is absolutely erroneous to consider as consent obtained by deceit consent given upon insufficient information. It is still more erroneous to regard the consent of one of the parties as vitiated by reason of the lack of sufficient information on the part of some third person, no matter how much interested the latter may have been in the contract.

The fraud or deceit which the Judge concludes existed consisted in "the defendant having concealed what he was under obligation to reveal." This is alleged in paragraph 6 of the complaint as follows:

"6. The defendant deliberately, knowingly, wilfully and with intent to defraud and deceive the plaintiffs (Mr. and Mrs. Strong) concealed from them the value of the said shares, and deliberately, wilfully, and intentionally deprived the plaintiffs of the means by which they might have investigated the value of the said shares, for the purpose of obtaining them for a very inadequate consideration, and by reason of the facts alleged the defendant thereby defrauded the plaintiffs." (Bill of Exceptions, page 2.)

The fact that a shareholder at any particular time was unaware of the value of his shares is imputable to him alone. This is the general rule of law, which does not excuse one's own ignorance

concerning matters which affect his own rights. And when some other person, as manager or representative, is under the obligation of informing the shareholders of the company concerning the value of their shares at any given time, the failure to perform this duty might give rise to rights within the company for the enforcement of any liability arising by reason thereof, but the consequences of such an admission cannot be extended beyond the liabilities peculiar to the contract by which the company was created, to other acts which may have been effected by the shareholder as a result of the ignorance of his own rights, whatever may have been the causes of his ignorance. If Mr. and Mrs. Strong themselves, instead of Jones, had made the sale now under consideration for the sum of
237 16,000 pesos, they could not have alleged that they were deceived by Gutierrez because the latter did not perform his duty toward them resulting from the contract by which the company was created. Whether they were the ones whose duty it was to know what was the value of their property, or whether it was Gutierrez who should have acquired this information and informed them of the actual value of the shares, is a matter which is entirely foreign to a contract of sale in which consent was freely given, without any deceit, without any information, good, bad, or indifferent, on the part of the purchaser, the result perhaps of an error on the part of the vendor by reason of the lack of this previous knowledge which is suggested and advised by even the slightest degree of care in the protection of one's own interests. It can never be said that the consent given was vitiated by deceit; even though it may have been by error, whether imputable or not to the contracting parties themselves, which latter consideration is not at present involved.

However this may be, the deceit which, according to the decision, was practiced, is that which, according to Article 1629, exists when "by insidious words or machinations on the part of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have made." Jones, one of the contracting parties, was not induced by the other—whether Kauffman or Gutierrez—to enter into the contract of sale under consideration by any other means than that of simple offer and acceptance, as testified to by both, and also by the intermediary, Sloan. It was not preceded by insidious words or machinations of any kind whatever, for as to such there is not the slightest proof, nor even an allegation, in the record. We do not see, therefore, how into an examination into the validity and efficacy of a contract of sale between
238 Kauffman or Gutierrez and Jones there can be injected deficiencies or omissions which might be imputed to Gutierrez by reason of obligations on the part of the latter with respect to Mr. and Mrs. Strong in the company in which they were interested.

Nor do we see upon this point any way by which the consent of the plaintiffs may be regarded as vitiated, when they themselves say they did not give their consent nor authorize Mr. Jones nor have any dealings whatsoever with Mr. Kauffman or Mr. Gutierrez. But we shall again revert, from another point of view, to this important sixth allegation of the complaint.

On the other hand, the facts found by the decision as constituting fraud on the part of the defendant are: (1) That his office being near that of Mr. Jones, Mr. Gutierrez, instead of addressing himself directly to Mr. Jones, employed Mr. Kauffman to deal with Mr. Sloan with respect to the purchase of the shares; (2) That, instead of paying for the shares with a check of his own, he used one of Messrs. Rueda Hermanos' checks and paid Mr. Kauffman 1,800 pesos for his services; and (3) That after the shares were purchased he sent them to Spain, so as to place them beyond the jurisdiction of the Court. The mere statement of these facts is sufficient to enable one to see that consent given prior to the occurrence of the last two facts mentioned—the payment by another's check and the sending of the shares abroad—could not have been affected by them, more especially when it is considered that the consent was given in absolute ignorance as to whether Mr. Kauffman was acting on his own behalf or for the account of some other person who, after the transaction was completed, may have paid him for his services. Neither of these facts can have had any influence whatever upon the mind of the vendor, Mr. Jones, and influence of this kind it is which must be considered for the purpose of determining
239 whether the consent expressed in the making of the contract was given knowingly, freely, and spontaneously.

To sum up, we are of the opinion that Articles 1265 and 1269 of the Civil Code are not applicable to the case.

(*b*) Lack of express authority on the part of the agent.

We examine the question from this point of view merely hypothetically. It is one thing that after a sale of shares, transferable by delivery, it be alleged, proven, and demonstrated beyond a doubt that the vendor was merely and agent, and entirely another thing that the purchaser of such shares is under any obligation to inquire beforehand whether the vendor is an owner or an agent, and in the latter case, what kind of an agency he has, unless some limitation appears either upon the face of the stock certificates themselves, or a restricted or qualified possession appears from the Mercantile Registry, where the stub books of the certificates should be filed. (Article 21, Code of Commerce.

The danger which the contrary theory offers is that in transactions concerning shares or mercantile paper transferable by delivery a revindicatory action might be allowed, in addition to cases of concealment of the transfer, theft, or loss of such paper, upon the simple allegation that the vendor was a mere agent, and more especially when, as in the present case, the vendor, by whom the contract was effected, does not appear as a party to the suit to defend his acts as one of the defendants. A stranger to the transaction, who did not take part in the contract, now demands its annulment, against one only of the contracting parties, and makes use of the other contracting party—the only one who could have damaged the plaintiffs by his acts—as a witness in support of the action, when, had he been made a defendant by reason of the loss which in such a case he would have inflicted upon his supposed prin-
240 cipal, he, the one who has violated the terms of the supposed bailment, might have defended his conduct as no one else would be able to do.

Mr. F. Stuart Jones, the vendor, and one of the witnesses in the case, is one of the head men of the firm of Smith, Bell & Co. "one of the most important firms of this city;" he was for some time "a patient of Dr. Strong." Both Mr. Jones and Mr. Wood, another one of the head men of the firm, held shares of the Philippine Sugar Estates Development Company, Limited. Both he and Mr. Wood voted in stockholders' meetings of the firm as such stockholders. One day in the month of September, 1903, Mr. Sloan, the broker, approached Mr. Strong with a view to getting shares in the company. Dr. Strong referred him, as stated, to Mr. Jones. Mr. Sloan went to see the latter in the course of the week; during the following week Mr. Sloan was visited by Mr. Jones who made his first offer, which was not accepted by Mr. Sloan. Negotiations were then commenced which continued some three weeks, at the end of which the price was agreed upon and fixed at 16,000 Mexican pesos. Immediately thereupon Mr. Knowles, an employee of the firm of Smith, Bell & Co., went to Mr. Sloan's office, the stock certificates were counted and delivered to Mr. Kauffman, from whom a check for the agreed amount was received. It has already been stated that the contract was executed on the 10th day of October, 1903. On the 11th Mr. Jones deposited the price received for the shares with the Hongkong and Shanghai Banking Corporation, in the account which he and Mr. Wood carried there as representatives of Mrs. Strong. A few days later Mr. Jones and Mr. Wood used this same money to purchase shares of the Chartered Bank of India, Australia, and China, Mr. Jones considering himself authorized to make this purchase, as well as to effect the sale in question.

241 Mrs. Strong herself as early as July, 1903, had heard a great deal of talk about the sale of the Friar Lands. "One afternoon about half-past six," Mr. Strong testifies (it subsequently appeared that this was on the afternoon of the 1st of December, 1903), "Mr. Jones came to the house and entered into conversation with my wife and myself. I had a newspaper, the Manila Times, and I said, 'I see that the Government is going to buy the Friar Land shares.' Mr. Jones said, 'What about it?' I said, 'My wife should make a good deal out of those shares.' He thought a minute or two and then he said, 'Your wife has no shares.' Of course, we were somewhat surprised, but nothing more was said about the matter at the time."

Referring to Mr. Sloan's proposal, Mr. Strong says that he communicated to Mrs. Strong the fact that he had received Mr. Sloan's letter asking whether she wished to sell her shares; that after receiving Mr. Sloan's letter he replied saying that he desired to consult Mr. Jones, in whose possession the shares then were, and that within a week he spoke to Mr. Jones, telling him he had received a letter in which Mr. Sloan spoke of the purchase of the shares, and that Mr. Jones told him that he, Jones, would probably hear from Mr. Sloan on the subject. It is alleged in the complaint that the contract made by Mr. Jones should be set aside for two reasons—on account of the lack of express authority for the latter to sell, and on account of the deceit practised on the plaintiffs, because Mr.

Gutierrez concealed from them the value of the shares and deprived them of means for discovering their value. (Complaint, pars. 4 and 6.)

From this it clearly appears that Mr. and Mrs. Strong were fully aware that Mr. Sloan desired to buy the shares. Mr. Stong himself had told Mr. Sloan to address himself to Mr. Jones, who had the shares in his possession. The very thing which was expected
242 occurred. It was expected that Mr. Sloan and Mr. Jones would enter into negotiations concerning the purchase of the shares. This was *expressly* understood, and this was exactly what Jones and Sloan did, and they did it just as Strong and Jones had expected. After his conversation with Strong, it would appear that the idea did not occur to Jones without suggestion "that if he could get a good price, it would be good business to sell them;" and "that his reason for selling them was that these shares had been on hand for years, and that nothing had been done; that he had heard of negotiations and sales, but nothing had come of it, and his idea was to sell them for cash and use the money for the purchase of something which would bring an income;" * * * He knew that there was an agrarian and political question pending which directly affected the value of the lands of the Philippine Sugar Etsates Development Co., and that the corporations holding them demanded a sum much greater than that which the Government had said it would pay for these lands, and this was one of the reasons why he sold, because the demands of the owners of the lands were so extravagant that he thought that a long time would go by before anything definite would be done and that these shares would be unproductive for perhaps two, three, or four years more." All this came into his mind after he had been told the week before by Dr. Strong that Mr. Sloan would approach him concerning the purchase of the shares—information which was given by Mr. Strong to Mr. Jones after he had informed his wife, Mrs. Strong, of Mr. Sloan's purpose of buying the shares in Mr. Jones' possession. He continues, explaining his attitude by saying that "he considered himself at that time absolutely free to sell these shares for Mrs. Strong upon what he considered to be the most advantageous terms possible; that he thought that he was empowered to sell these shares to Mr. Sloan because he acted for Mrs. Strong in her business
243 affairs; that this lady had never given him authority for each individual transaction, acting as he did for her in *all* her business affairs as her agent; these shares were only part of her property, and he considered himself to be empowered to sell any part of her property."

When it is the principal himself who speaks to the agent concerning a contract which some third person is about to make with the latter; when it is the principal himself who refers this third person to the agent to deal with him, and the third person and the agent come to an understanding after negotiations which have continued for some weeks, these facts, examined in the light of a sound discretion, show that it cannot be successfully maintained that the principal had no knowledge of such contract. The principal might complain that the agent went beyond the scope of his authority, if

such was the case; but that *express* authority was given for the performance of the act cannot reasonably be denied by the principal. So great was the weight of the common consent which existed between principal and agent for the making of that contract that its influence is reflected in the complaint itself, and this accounts for paragraph VI, which implies *consent* on the part of the principals. If it were not so, it could not be alleged with respect to this contract that it was vitiated by fraud or deceit on the part of the defendant, if the plaintiffs had not given a consent which could be affected by such fraud or deceit. Such is the force of truth.

We may then conclude upon the evidence of these facts that there was an agreement between the principal and the agent for the sale of the shares upon the terms on which the sale was made. That is to say, that there was an express authority and that the
244 consent given as stated was given knowingly, freely, and spontaneously, and was absolutely perfect and sufficient to support the validity and efficacy of the contract; but that, as frequently happens, especially in business transactions, the purchaser got the best of the bargain because the owners did not exercise the care necessary to find out what such shares were worth then or might be worth later. And this is the *deception* which, subsequent to the execution of the contract, nearly two months after, they discovered that they had suffered;—a deception which consists, as Mr. Jones stated to Mr. Sloan, in "having made a bad bargain, as he had no idea that the Government was going to buy the lands so soon"; deception, in fine, which cannot, under the Civil Code, be considered as fraud, either principal or incidental.

II. But abandoning the hypothetical discussion, and conforming strictly to the law, our view of the case may be expressed in the following terms:

The Code of Commerce is preceded by an introduction which constitutes the most authoritative source of its interpretation. The first paragraph of this introduction refers to Sec. 1 of Title 3, Book 2 of the Code, and is as follows:

"In dealing with the subject of agency, the drafters of the bill could not disregard the great increase which has occurred in our times in the volume of business conducted through agents, and which in turn has greatly influenced the manner in which mercantile agencies are carried out, and the transactions effected thereby. Thus it is that while at the time when the Code of 1829 was enacted, mercantile agencies were only accepted by persons habitually engaged as commission agents, and solely concerned the purchase and sale of merchandise, at the present time all merchants, without distinction, including the great business corporations, act as agents, extending their operations to placing large state, provincial, and municipal loans, the negotiation of industrial or mercantile stocks and shares, and the purchase of the same for their own account."

Upon this basis Arts. 244, 245, and 246 of the new Code of Commerce of 1885 were drafted,—the same Code which is now in force in the Philippines. These articles read as follows:

245 "Art. 244. Whenever the purpose of an agency is to effect some act or operation of commerce, and the agent or the principal is a merchant or broker, the agency shall be regarded as mercantile.

"Art. 245. The agent may transact the business entrusted to him by contracting in his *own* name or in that of his principal.

"Art. 246. When the agent contracts in his *own* name he shall not be obliged to disclose his principal and shall be personally liable, as though the business were his own, to the persons with whom he may have contracted, who shall have no action against the principal, nor the latter against the former, without prejudice to the principal's right of action against the agent, and *vice versa*."

Mr. Jones' agency, of which we have heard so much in this case, after the sale of the shares was consummated, is a *mercantile* agency because its purpose or object was an *operation of commerce* and the agent is a *merchant*. According to par. 2 of Art. 2 of the Code of Commerce, all matters which that Code deals with are declared to be acts of commerce. The rules of law which govern shares of stock transferable by delivery are to be found in the Code of Commerce, which places such shares with respect to their negotiation upon the same footing as Government paper, some mention of which had been made in the former Code. The shares were issued by the Philippine Sugar Estates Development Co., which, as appears from its Articles of Incorporation and By-laws, introduced in evidence by the plaintiff, is a mercantile corporation. (Art. 545.) That Mr. Jones is a merchant is a fact which has been admitted by all concerned in the trial. He himself replied affirmatively to these two questions which were addressed to him: "As a matter of fact, you are the head of the firm of Smith, Bell & Co. in these Islands?" "Is not this one of the two most important firms in the Philippine Islands?" Consequently, he acted as a commercial agent in the sale of the shares. And he acted as a commercial agent who effected a sale in his own name, for

246 in the course of the negotiations he made no mention of the name of any other person, nor was he under obligation to do so. He acted as though the business were his own. Thus it is that neither Kauffman nor Gutierrez have a cause of action against the principals, Mr. and Mrs. Strong, nor Mr. and Mrs. Strong against Kauffman and Gutierrez. Consequently the complaint should have been dismissed as not stating facts constituting a cause of action, as is expressly provided by the law.

Inasmuch as this was not done, and the case went to final judgment, with this we close our dissenting opinion, and hold that the judgment appealed should be reversed *in toto*, the plaintiffs to pay the costs of the trial court.

This conclusion of ours refers to the first finding of the judgment appealed, based upon the first cause of action set forth in the amended complaint.

In the original complaint, dated January 12, 1904, the plaintiffs merely asked that the Court declare that the stock in question was the property of Eleanor Erica Strong, and order the same returned—a prayer in harmony with a revindicatory action brought against a

defendant between whom and the plaintiffs no privity existed by reason of the acquisition of these shares. But their attention having been drawn to the legal doctrine, established by an unbroken line of precedents, that "where the action is based upon the nullity of an act or contract, the declaration of such nullity should be solicited either previously or simultaneously, and as a consequence thereof, a recognition of the rights arising from such declaration of nullity," on the 14th of April of the same year they amended their complaint by adding thereto: "Or if the defendant acquired a title to the said shares by reason of the said transaction, then the plaintiffs are en-
247 titled to rescind and cancel the agreement by means of which this transaction was effected, and require the defendant to return the said shares of stock to the plaintiffs." As against this allegation we hold that no right of action exists in favor of the plaintiffs to set aside the sale effected by F. Stuart Jones, the agent, in his own name, and that therefore the said sale subsists and is valid and effective, not having been attacked by the only persons who might attack it. It follows that no decision can be made concerning the revindicatory action, that is, the prayer for the return or delivery of the shares, which at the present time are held under valid title by a third person, to the lady who claims to be the owner thereof, until that title, in due form and by competent action, be declared void. We do not, therefore, consider it necessary to pass upon the revindicatory action, as it is not properly presented; but if it is before us, then, upon the legal grounds above expressed, we dismiss the action, and reversing the judgment appealed, discharge the defendant of the complaint, the costs of the trial court to be paid by the plaintiff.

(Signed) C. S. ARELLANO.
" VICTORINO MAPA.

248 And thereafter, to wit, on the ninth day of August, 1906, the same being one of the regular juridical days of the July, nineteen hundred and six, term of said Court, came the plaintiffs, by their attorneys, and came also the defendant, by his attorneys, and presented his motion for a new trial; and said Court, after having heard read the said motion and the affidavits in support thereof, and the arguments of counsel having been heard, and the Court being fully advised in relation thereto, made an order which reads in words and figures as follows, to wit:

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

AUGUST 9, 1906.

R. G. No. 2101.

ELEANOR ERICA STRONG ET AL., Plaintiffs and Appellees,
vs.
FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

TRACEY, *J.*:

The defendant having petitioned for a new trial on the ground of new and material evidence discovered by him, which could not have been discovered on the trial below by the exercise of due diligence, and which is of such a character as probably to change the result, and having attached to his petition affidavits showing the facts 249–263 entitling him to a new trial and such newly discovered evidence, consisting of a copy of a power of attorney from the plaintiffs to F. Stuart Jones and Robert H. Wood, jointly and severally, bearing date July 1, 1901, and such evidence appearing to be necessary to a just and final disposition of this cause, we are of opinion that, notwithstanding grave doubt on the controverted facts before us, as to the diligence of the defendant in the matter, the ends of justice require that the offered evidence be received together with such other evidence in relation thereto as both parties may have to adduce upon the point in question, same to be considered hereafter together with the evidence produced at the trial in the lower court.

Wherefore, it is ordered that, when properly authenticated, such evidence be received, together with such further evidence as both parties may desire to produce in reference to the powers granted by the plaintiffs, or either of them, to Mr. F. Stuart Jones, and which may be pertinent to the case, all such evidence to be taken before a commissioner to be designated by the parties by common consent within a period of ten days, or, in default of such agreement, to be named by this Court, upon a date and at an hour to be determined by such commissioner, who shall return to this Court the evidence so taken by him before the first of October, 1906.

(Sgd.) JAMES F. TRACEY.

We Concur:

(Sgd.) C. S. ARELLANO.
" FLORENTINO TORRES.
" VICTORINO MAPA.
" CHARLES A. WILLARD.

Mr. Justice Carson took no part.

264 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. No. 2101.

ELEANOR ERICA STRONG ET AL., Plaintiffs and Appellees,
vs.
FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

Now come the parties in the above entitled cause and respectfully represent to the Honorable Supreme Court that the document marked Exhibit "A", hereto annexed, is a copy of the power of attorney referred to in the affidavits of William J. Rohde and Eduardo Gutierrez filed in this cause before this Honorable Court.

And the said Commissioner not having up to date fixed a day for the presentation of evidence in accordance with the decision of this Court dated August 9th, the parties pray that the Court admit and consider directly the annexed exhibit without the necessity of presenting the same before the Commissioner, and without the necessity of hearing further evidence, and that the appointment of said Commissioner be held to have terminated. The appellee objects to the admission of said Exhibit "A" on the ground that the same is irrelevant and immaterial.

Manila, October 20, 1906.

KINNEY, ODLIN & LAWRENCE,
Attorneys for Appellees.
HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Appellant.

265 EXHIBIT "A".

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
EXECUTIVE BUREAU,
DIVISION OF ARCHIVES, MANILA.

Hay un sello que dice: Fábrica Nl de la Moneda y Timbre—1898 y 99—Sello 10.o 25 C. de peso—N. 0.082.008—U. S. Military Government 1901 Internal Revenue—Mandato otorgado por la Señora Eleanor Erica Strong á favor de los Señores Don Roberto H. Wood y Don Francisco Stuart Jones.—Número cuatrocientos ochenta y cuatro—En Manila á primero de Julio de mil novecientos uno. Ante mí, Don Enrique Barrera y Caldes, Doctor en Derecho Civil y canónico, Notario público de esta Ciudad de Manila, con vecindad y residencia en la misma, comparece: La Señora Eleanor Erica Strong dedicada á las labores propias de su sexo, asistida de su esposo el Señor Richard Pearson Strong, Médico del Ejercito de los Estados Unidos, ambos mayores de edad y vecinos de esta Capital, no exhibiendo cédulas personales por hallarse esceptuados del pago de dicho impuesto.—Y teniendo, á mi juicio, la capacidad legal necesaria para formalizar esta escritura, sin que nada en contrario

me conste, la Señora Eleanor Erica Strong, previo el oportuno consentimiento, de su esposo que de haber sido pedido, concedido y aceptado, doy fé libre y expontaneamente, manifiesta y otorga: Que confiere poder tan ámplio y bastante cuanto se exiga y sea necesario á favor de los Señores Don Roberto H. Wood y Don Francisco Stuart Jones, ambos comerciantes, mayores de edad y vecinos de esta Capital para que en nombre y representación de la otorgante y haciendo uso de sus derechos y acciones, juntos ó separada é indistintamente cualquiera de los mismos, puedan ejecutar
266 y practicar los actos siguientes:—Administrar, dirigir y gobernar todos los bienes y rentas de la otorgante de cualquier clase y condición que sean, cobrando y haciéndose cargo de sus rentas, frutos y productos; vendiéndolos por los precios y bajo las condiciones que estimen más convenientes; cobrando el importe de la venta de presente ó á plazos; formalizando los documentos públicos y privados que fuere necesario; hipotecando y gravando dichos bienes mediante las condiciones que tengan por conveniente; solicitando las trasferencia, bien á nombre de la otorgante, bien al de sus dichos apoderados, de las acciones que se hallen á nombre del hoy finado Don Ricardo H. Andrews, á cuyo fin practiquen las gestiones necesarias; realizando y llevando á cabo la trasferencia de las acciones de las sociedades, tituladas Manila Trading Company y Oriente Hotel así como tambien el derecho que su finada esposo Don Ricardo H. Andrews tiene sobre determinada suma de dinero, conocido con el nombre de Settlement que la o torgante se obligó á trasferir á Don Enrique J. Andrews en virtud de escritura formalizada ante la fé del presente Notario en doce de Marzo del presente año á cuyo efecto autorizarán los traspasos que se requieran para declarar realizada la trasferencia de las expresadas acciones; cobrando y percibiendo todas y cualesquiera sumas y cantidades que á la otorgante corresponda percibir de cualquier persona Corporación ó sociedad en virtud de cualesquiera título, acciones ó derechos; librando los recibos, resguardos y demás documentos procedentes y practicando cuantos actos y gestiones haría y practicaría la otorgante si interviniera directa y personalmente.—Pues para todo lo dicho y sus incidencias, confiere á los expresados Señores Wood y Stuart Jones el poder más ámplio y eficaz que al efecto se necesite, libremente y sin limitación alguna; prometiendo tener por subsistente y validero cuanto en su virtud ejecutaren, bajo la
267 obligación más solemne que en derecho proceda.—Así lo dice y otorga á presencia de los testigos instrumentales Don Cándido del Rosario y Espíritu, y Don Tomás Pilar y Pimentel ambos dependientes mayores de edad y vecinos de esta Capital; y leida esta escritura por mí el Notario por haber renunciado á hacerlo personalmente todos los presentes, la otorgante se ratifica y todos firman. De todo lo que, y del conocimiento, profesión y vecindad de la compareciente, doy fé.

ELEANOR ERICA STRONG.
RICHARD PEARSON STRONG.
RUBRICADA. CANDo ROSARIO.
RUBRICADA. TOMÁS PILAR.
RUBRICADA. Dr. ENRIQUE BARRERA Y CALDES.

Hay un sello de la notaria.

NOTA.—Libré primera copia de la presente escritura á instancia de la otorgante, en un pliego de papel del sello séptimo, habilitado para el corriente año, fecha de su otorgamiento; doy fé.

BARRERA. RUBRICADA.

Certifico que la precedente copia está literalmente tomada de su original que obra en esta oficina, que sello y firmo en Manila á veintiocho de Agosto de mil novecientos seis.

[Sello de Rentas Internas de á veinte centavos, cancelado.]

M. DE YRIARTE,
Chief, Division of Archives,
Ex-Officio Notary Public.

[SELLO.]

Which, translated into English, is as follows:

In Manila, July 1, 1901. Before me, Don Enrique Barrera y Caldes, Doctor of Civil and Canon Law, Notary Public, a resident of Manila, appeared Mrs. Eleanor Erica, Strong, engaged in the occupations proper to her sex, accompanied by her husband,
268 Mr. Richard Pearson Strong, Medical Doctor of the Army of the United States, both of legal age and residents of this city, without personal cedulas, they being exempt from the payment of such tax.

And they possessing, in my judgment, the necessary legal capacity to execute this document, nothing to the contrary to me appearing, the said Mrs. Eleanor Strong, with the consent of her said husband first asked, granted and accepted, as I hereby certify, freely and voluntary declared the following: That she hereby grants to Messrs. Robert H. Wood, and Francis Stuart Jones, both merchants, of legal age, and residents of this city, such ample and sufficient powers as may be requisite and necessary to enable them, in the name of and as representing the grantor, and in the exercise of the rights and actions of the latter, or either of them, jointly or severally, to execute and perform the following acts:

To administer, manage, and control all the property and revenues of the grantor, of whatsoever nature and character they may be, collecting and taking over the rents, fruits, and products of the same; selling them for the prices and under the conditions which they may deem proper; collecting the amounts realized from a sale of the same, either in one payment or by instalments; executing all such public and private documents as may be necessary; mortgaging and otherwise encumbering said property under such conditions as they may see fit; endeavoring to bring about a transfer, either in the name of the grantor or in that of her said attorneys in fact, of the shares now standing in the name of the late Mr. Richard H. Andrews, to which end they may do and perform all acts that may be necessary; effecting the transfer of the shares in the companies known as The Manila Trading Company and The Oriente Hotel and that of the right possessed by her deceased husband, Mr.
269 Richard H. Andrews, to a certain sum of money known under the name of the "Settlement", which the grantor has

hitherto bound herself to transfer to Mr. Henry J. Andrews by deed executed before the present notary on March 12th of this present year, to which end they will authorize all such transfers as may be necessary to execute and complete the transfer of the aforesaid shares; collecting and receiving all and any sums of money which the grantor may be entitled to receive from any person, corporation or firm by virtue of any titles, shares, or rights whatsoever; giving all proper receipts, acquittances, and other documents, and doing and performing all acts and things which the grantor might do or perform if personally present.

And, therefore, for all of the aforesaid purposes, and for everything incidental thereto, she hereby confers upon the said Messrs. Wood and Jones the fullest and most effective powers which may be necessary in the premises, freely and without any limitation whatsoever; hereby ratifying and confirming, in the most solemn manner known to the law, everything which her said attorneys may do by virtue of these presents:

Thus declared and executed in the presence of the subscribing witnesses Don Candido del Rosario and Don Tomás Pilar y Pimentel, both clerks, of legal age, and residents of this city; and this instrument having been read by me, the notary, all parties present having waived their right to read it for themselves, the grantor hereby ratifies the same and all parties sign. All of which I certify.

ELEANOR ERICA STRONG.
RICHARD P. STRONG.
CAND'O ROSARIO.
TOMÁS PILAR.
(Signed) DR. ENRIQUE BARRERA Y CALDES.
[NOTARIAL SEAL.]

I certify that the foregoing copy is literally taken from its original which is on file in this office, and I seal and sign the
270 same in Manila this 28th of August, 1906.

M. DE YRIARTE,
Chief Division of Archives, ex-Officio Notary Public.

Twenty-cent Internal Revenue Stamp.

[Seal of Division of Archives.]

Supreme Court.

OCTOBER 22, 1906.

SIR: This Supreme Court, in session of the 20th inst., decreed as follows:

"Having seen the writing filed by Messrs. Kinney, Odlin & Lawrence, representing the appellees, and Messrs. Hartigan, Rohde & Gutierrez, representing the appellant, in Cause No. 2101, Strong, *et al.* against Gutierrez, praying that in view of the fact that the Commissioner appointed by this Court on August 9th, 1906, has not up to the present fixed a day for the presentation of proof upon the motion for a new trial filed by appellant, Exhibit "A," be con-

sidered directly, which said Exhibit "A" is annexed to the aforesaid writing, and is a copy of the power of attorney referred to in the affidavits of Messrs. William J. Rohde and Eduardo Gutierrez, filed with said motion, and that without the necessity of further proofs being had, the appointment of said Commissioner be held to have terminated, the Court, being informed in the premises, ordered that the prayer be granted, allowing to both parties ten days from date hereof within which to present their respective arguments, either in manuscript, printing or typewriting, insofar only as concerns the new evidence presented."

Which I communicate to you for your information.

J. E. BLANCO,
Clerk Supreme Court P. I.

True copy.

KINNEY, ETC., HARTIGAN, ETC., AND AITKEN.

And thereafter, to wit, on the fifteenth day of November, nineteen hundred and six, the same being one of the regular juridical
271 days of said July, nineteen hundred and six, term of said Court, at which there were present the Honorable C. S. Arellano, Chief Justice, and the Honorable Associate Justices Victorino Mapa, Florentino Torres, E. Finley Johnson, A. C. Carson, Charles A. Willard and James F. Tracey, Mr. J. E. Blanco, Clerk, and others, came the plaintiffs and appellees, by their attorneys, Kinney, Odlin & Lawrence, and came also the defendant and appellant, by Hartigan, Rohde & Gutierrez, his attorneys, said cause having theretofore been regularly set for trial, the evidence produced by the respective parties and the arguments of the respective counsel were heard, and the Court, being fully advised in the premises, rendered a decision which reads in words and figures as follows, to wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

November 15, 1906.

General Register No. 2101.

Book of Judgments 10, F.

Tried January 18, 1906.

Present: Hon. Chief Justice and Associate Justices Torres, Mapa, Johnson, Carson, Willard and Tracey.

ELEANOR ERICA STRONG and HER HUSBAND, Plaintiffs and Appellees,

vs.

FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

Decision.

A motion by the defendant for a new trial of this action under sub-section of Article 497 of the Code of Civil Procedure having been granted to the extent of allowing the submission of new evi-

dence as to the nature of the authority delegated by the plaintiff to her agent Jones, we have now to consider the effect of the additional proof.

272 Neither party took advantage of the provision of our order allowing oral testimony, and the new proof before us consists solely of a second power of attorney, bearing date July 1st, 1901, from the plaintiff Eleanor Erica Strong to Robert H. Wood and Francisco Stuart Jones.

From the two opinions heretofore rendered in this case, it is apparent that the division of the Court arose upon the point of an express agency from the plaintiff to sell the stock which was transferred to the defendant by Jones. Notwithstanding the many indications of such a power, so clearly pointed out in the opinion of the learned Chief Justice, the majority of the Court did not feel at liberty, on the proofs then before us as a whole, to infer its existence and its character as an express authority to sell, complying with Article 1713 of the Civil Code.

In the majority opinion it was said:

"The difficulty with this branch of the case is the scantiness of the evidence; the documents have been destroyed, the declarations of the parties are brief, and it would be impossible to imply an express power from them without assuming facts of which no sufficient evidence exists."

The instrument now received in evidence contains the following clause:

"That she hereby confers upon Messrs. Roberto H. Wood and Francisco Stuart Jones, both of whom are of legal age and resident merchants of this city, ample and sufficient power, and such as may be requisite or necessary, to execute in her behalf, either jointly or separately, any of the following acts:

"To administer, manage and control all the property and revenues of the grantor of whatever nature and condition, collecting and holding the revenues, fruits and products thereof; disposing of the same at such prices and under such terms as they may deem
273 most convenient; receiving the proceeds of the sale thereof at the time of such sale or in instalments, executing such public and private instruments as may be necessary; hypothecating or incumbering said property under such terms and conditions as they may deem advisable; securing the transfer, either to the grantor or to her said attorneys in fact for her benefit, of all shares which may be in the name of Ricardo H. Andrews, deceased, and to this end to do all that may be necessary for the transference of all such shares, in the associations known as The Manila Trading Company and The Oriente Hotel, and also the interest which her said deceased husband, Ricardo H. Andrews, has in a certain fund known as the "Settlement," which the grantor has heretofore agreed to transfer to Enrique J. Andrews by virtue of an instrument executed before the undersigned notary on March 12th of the present year, and to this end they shall execute such transfers as may be necessary to effect the conveyance of the said shares, demanding and receiving whatever sums may be due her from any person, corporation or association whatsoever, by virtue of any title or right executing

such receipts and acknowledgments of payment or other documents as may be necessary and to exercise such other acts as the grantor herself would exercise if she intervened directly and personally."

We entertain no doubt of the fair meaning of this language. It empowers either Jones or Wood to sell the general stocks of the plaintiff. A construction that would restrict the words "disposing of the same" to the revenues, fruits and products, rather than the property itself, is inconsistent, with the nature of such revenues, with the right of hypothecation of property expressly granted, and with the general scope of the power, as well as with its interpretation by the subsequent acts of the parties.

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It was clearly under this authority that the proceeds of the sale of other stocks made by either one of these attorneys were deposited and reinvested in their joint names, and we think they were justified in their construction of this instrument that induced them to adopt this course of business. It is also clear that the direction of the plaintiff to Jones, in the conversation on the Luneta, not to part with this stock until he got its face value, related to his action under this particular instrument and amounted to an express recognition of its character as a preexisting grant of a power of sale.

Nor can we sustain the contention of the plaintiffs that the maxim *"expressio unius est exclusio alterius"* is applicable to the shares affected by this power. The two stocks specified in the language heretofore quoted, those of the Manila Trading Company and the Oriente Hotel Company, differed from other investments in this respect, that they stood in the name of the plaintiff's deceased husband and, unlike the shares that the the subject of this action, were not payable to bearer. This peculiar condition called for a special direction for their transfer, while all other stocks fell naturally under the general terms of the power.

This document is also important as a test of the accuracy and credibility of several of the witnesses and of their good faith in endeavoring to explain away upon other hypotheses the facts that grew naturally out of its existence and its terms.

According to the theory of both opinions, this newly discovered evidence is absolutely decisive of the issues in this case. The order for judgment heretofore made by this Court is set aside and the judgment of the lower Court is reversed, the defendant is absolved, and the action is dismissed upon its merits, with costs against the plaintiff in the Court of First Instance, but without costs in this Court.

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After twenty days let judgment be entered in accordance with this decision, and ten days thereafter let the case be remanded to the court of its origin for the proper proceedings according to law.

It is so ordered.

(Sgd.) JAMES F. TRACEY.

We concur:

(Sgd.) C. S. ARELLANO.
" FLORENTINO TORRES.
" VICTORINO MAPA.
" CHARLES A. WILLARD.

Justice Carson did not take part.

Dissenting Opinion.

JOHNSON, *J.*:

I can not give my consent to the doctrine contained in the decision of the majority of the Court. In the first decision in this case I prepared a concurring opinion, but for some reason it was lost and does not appear as a part of said decision. The first opinion prepared by the Court discussed two questions:

First. That her agent had no power to sell or deliver her stock in the Philippines Estates Development Company, Limited; and

Second. That its sale through her agent was procured by fraud on the part of the defendant.

My concurring decision in the first instance was based upon the second ground, a ground repudiated by the majority opinion.

276 The evidence adduced during the trial of said cause in the court below justifies the following finding of facts

1st. That the plaintiff, Eleanor Erica Strong, is a married woman and the plaintiff Richard P. Strong is her husband.

2nd. That on and before the 10th day of October, 1903, the plaintiff Eleanor Erica Strong was the owner of eight hundred (800) shares of capital stock in the Philippines Sugar Estate Development Company, Limited.

3rd. That the defendant, Francisco Gutierrez Répide, was the General Manager of the said company.

4th. That the par value of the said shares was one hundred (100) dollars, Mexican currency.

5th. That on the said 10th day of October, 1903, one F. Stuart Jones had in his possession the said eight hundred (800) shares of stock and on the said day transferred the same to the defendant in the consideration of 16,000 dollars, Mexican currency, without the knowledge of the plaintiff.

6th. That on the said 10th day of October the defendant well knew that the said shares were the property of the plaintiff.

7th. That the said plaintiff, Eleanor Erica Strong, had not on the said 10th day of October, neither has she since said day, confirmed or ratified said sale, but on the contrary, as soon as she became aware of the sale of said stock, she immediately repudiated said sale upon the ground, among other things, that her alleged agent, Jones, had no authority to sell said stock, and instituted an action in the Court of First Instance for the purpose of having said sale set aside, and at the same time prayed for an injunction against the defendant to prevent him from disposing of said shares until further order of the Court.

277 8th. That there had been issued 42,030 shares of the Philippines Sugar Estates Development Company, of which the defendant Gutierrez owned 30,040.

9th. That Mr. Gutierrez was a director and the administrator of the said Philippines Sugar Estates Development Company.

10th. That during the months of July, August, September and October, 1903, the defendant was negotiating with Governor Taft, as the representative of the Philippine Government, for the sale of

the lands known as the "Dominican Lands," which represented the lands of the Philippines Sugar Estates Development Company.

11th. That on the 5th day of July, 1903, Governor Taft, as said representative, offered to the defendant for said lands the sum of $2,736,899.57 gold, the equivalent of value of which in Mexican currency at that time was $6,842,248.92, *dollars.* (See Executive Order No. 17 of May 1st, 1903, for the value of Mexican currency in the Philippine Islands July 5th, 1903.)

12th. That the par value of the 42,030 shares which had been issued by the Philippines Sugar Estates Development Company was 4,203,000.00 dollars, Mexican currency.

13th. That of the said 42,030 shares, the defendant, Gutierrez, and Eleanor Erica Strong owned 3,840.

14th. That the above offer for the purchase of the lands of said Company *remained open for acceptance by the defendant until sometime before the end of October of the year 1903,* when Governor Taft, as said representative, offered to the defendant as administrator of said estate a sum equal to about 25% of an increase over and above the said offer of July 5th.

15th. That after some negotiations between the defendant and other Catholic Church organizations which were attempting
278 to dispose of their lands to the Government, and after the defendant had made certain reservations of the lands of the company which he represented from the offer which he first made, and after securing from the other said organizations which were desiring to sell their lands the sum of $335,000.00, he sold to Governor Taft, as said representative, the lands which remained of the said Philippines Sugar Estates Development Company for the sum of $3,671,657.00, gold, adding to which the sum of $335,000.00, which he received from the other Church organizations, the sum would be $4,006,657.00 gold, which the defendant received for his company, the equivalent value of which in Mexican currency was 9,535,843.66 dollars. (See Executive Order No. 55, July 18th, 1903.)

16th. The value of the 42,030 shares of said stock, under the offer of Governor Taft made on the 5th day of July, was $2,736,899.57 gold, or 6,842,248.92 dollars Mexican currency. Under this offer one share of the stock was worth $65.00 plus, gold, or 162 dollars, plus, Mexican currency. This offer, which the defendant might have accepted at any time up until after the time he purchased the said stock of the plaintiff, made the eight hundred (800) shares of the plaintiff worth the sum of 129,664 dollars, Mexican currency, for which he paid the plaintiff the sum of 16,000 dollars, Mexican currency, making a profit to the defendant, had he accepted the offer of Governor Taft, which he had authority to do, of 113,664 dollars, Mexican currency.

17th. That the value of the stock based upon the cash actually received by the defendant from the Government, without reference to the land which the said company retained, would be 226.88 Mexican currency, making the 800 shares of the plaintiff worth 181,504 dollars, Mexican currency, or 165,504 dollars, Mexican
279 currency more than the defendant had paid to the plaintiff for her said shares.

18th. That the office of the defendant, Gutierrez, was in the same building and next door to the office of Mr. Jones, and that, notwithstanding this fact, the defendant employed one Kauffman, whose place of business was some distance from the office of both the defendant and Jones, to buy the said stock of the said plaintiff through still another third person called Sloan, and paid to the said Kauffman the sum of $1800.00 for his services.

19th. That Mr. Kauffman, as agent of the defendant for the purchase of said stock, in order to keep secret the identity of the real purchaser, represented to the said Sloan that he, Kauffman, desired to purchase the said stock for a member of his wife's family.

20th. That the defendant, in order to further keep secret the fact that he was purchasing the stock, paid for said stock by a check not in his own name, but in the name of Rueda Hermanos.

21st. That the evidence does not disclose that the plaintiff Eleanor Erica Strong had any knowledge whatever of the negotiations which the defendant was carrying on for the sale of the property of said company.

22nd. That while the defendant had negotiated for many months for the sale of all the property of the said association, he failed absolutely to call the attention of the plaintiff, who was a large stockholder in the said company, to the said fact.

23rd. That the defendant was its manager and director and conducted the transaction for the sale of the property of said corporation without any formal authorization by the said corporation.

280 24th. That the defendant was also in person the holder of a large majority of the stock, thus not only controlling the process of the treaty with the Government in all its stages, but also its ultimate result by his own vote in the shareholders' meetings.

From the foregoing facts adduced from the evidence given in the Court below, the conclusion of facts by the lower court, to wit: That the defendant, while acting as general manager of the Philippine Sugar Estates Development Company, holding and owning nearly three-fourths of all the stock of said company, carried on negotiations, without the knowledge of the stockholders or the Board of Directors of said company, for the sale of all the property of said company, and while having it within his power, by simply consenting to terms already offered, to sell such property at a price which would more than double the stock of said company, did secretly and clandestinely purchase said stock of the plaintiff at a very low price, not equaling 1/10 of the value of the stock, based upon the price which he had already been offered, without acquainting her with all or any of such facts, and thereby violating the fiduciary relation which existed between him as general manager and one of the principal directors, and the plaintiff, who was one of the large stockholders of such company.

When the stockholders of a corporation elect a Board of Directors for the purpose of managing the business affairs of said corporation and such stockholders accept this responsibility, they thereby become the agents and stand in a fiduciary relation, with the stockholders in the management of such corporation, and will not be permitted there-

after during the continuance of such relation to deal with the property of said corporation in a way which will result to their individual benefit as against the rights and interests of said stockholders. If they do, such special advantage will result to the advantage of the particular stockholders injured. This, however, does not mean that a director may not openly and above-board deal in the stock of the corporation, buy and sell the same at his pleasure. It simply means that when the general manager of a corporation or a director of the same has it within his peculiar power to greatly enhance the value of the stock of the corporation, that he can not secretly buy the stock of the stockholders of said corporation at a shockingly reduced price without giving them full information concerning the present and prospective value of said stock. If any other rule is permitted, a general manager of a corporation might ruin the value of the stock of the stockholders of said corporation while they thus were becoming immensely wealthy while acting in a fiduciary relation with such stockholders.

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I maintain that whatever financial gain the general manager, the Board of Directors, or any member of the same, may secure in this way shall result to the benefit of the stockholders or to any one of them so injured.

This theory was entirely repudiated on the part of the majority in the first opinion written in this cause.

I maintain that the general manager, directors, or trustees, by whatever name called, of a corporation, are the agents selected by the stockholders or members, to manage the ordinary affairs of the corporation in the exercise of their best discretion, subject to the charter of said corporation and the by-laws, rules or regulations prescribed by the stockholders; that they occupy a fiduciary relation towards the stockholders and should be treated by the courts as trustees for them. (Thompson's Commentaries on the Law of Corporations, Section 4009.)

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Chancellor Valworth, very early in the history of the jurisprudence of the State of New York, in the case of Robinson *vs.* Smith (3 Page (N. Y.) 222) (24 American Decisions, 212) said:

"Directors are trustees or managing partners and the stockholders are *cestui que trust* and have a joint interest in all the property and effects of the corporation, and no injury to the stockholders, sustained by a fundamental breach of this trust, can, upon the general principles of equity, be suffered to pass without a remedy."

"The General Manager or the directors of a corporation will not be allowed to deal with the corporate funds or property for their private gain. They have no right to deal for themselves and for the corporation at the same time. If they do, they must account for the profits made by the use of the company's assets and for the money made by a breach of trust.

Ward *vs.* Davidson, 89 Mo., 445 and 458.

Wardell *vs.* Railroad Company, 103 U. S. 651.

In this latter case, after the statement of facts, which showed clearly the intention of certain directors to enter into negotiations

which should result to their individual profit as against the interests of the corporation, Mr. Justice Field, in deciding the case, said:

"It hardly requires argument to show that a scheme thus designed to enable the director who authorized the contract to divide with the directors large sums which should have been saved to the company, was utterly indefensible and illegal. Those directors, constituting the executive committee of the Board, were clothed with power to manage the affairs of the company, for the benefit of its stockholders and creditors. *Their character as agents forbade the exercise*
283 *of their powers for their own personal ends against the interest of the company.* They were thereby precluded from deriving any advantage from contracts made by their authority as directors, except through the company for which they acted. Their position was one of great trust, and to engage in any matter for their personal advantage inconsistent with it was to violate their duty and to commit a fraud upon the company."

It is one of the fundamental principles of law that a person acting as an agent or in a fiduciary relation cannot act for himself and at the same time as agent for another whose interests are conflicting. Thus a person cannot be a purchaser of property and at the same time agent of the vendor. The law will always condemn the transactions of such a party in his own behalf or in respect to matters concerning him as agent of others and will give relief against such acts whenever their enforcement is seasonably resisted. Directors and general managers of corporations and all other persons who sustain any fiduciary relation to other parties and are clothed with power to act for them are subject to this rule.

Great Luxembourg Railway Company *vs.* Magnay, 25 Beav. 586.

In the case of Flint & Pere Marquette Railway Company *vs.* Dewey (14 Mich. 477) it appeared that the secretary and a director of the plaintiff company entered into a contract on behalf of said company by virtue of which they were to receive financial profit. A suit was brought to compel the said director and secretary to turn over to the stockholders the fruits of said contract, and in deciding the case the Supreme Court said:

"It is possible there may have been no actual fraud and that the contract could not have been let on better terms, but the principle of law applicable to such a contract renders it immaterial, under
284 the circumstances in this case, whether there has been any fraud in fact or any injury to the company. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit the agent to place himself in a situation in which he may be tempted by his own private interest to disregard that of his principal, and if such contracts were held valid until shown to be fraudulent and corrupt, the result, as a general rule, would be that they must be enforced in spite of fraud and corruption. From the evidence in the case, we think all of the eleven bonds (so acquired by the defendants) in question were, as between the corporation and the defendant, the property of the corporation."

People *vs.* Township Board etc. 11 Mich., 225.

In the present case the defendant Gutierrez, in all of his negotiations with Governor Taft in his effort to sell the property of the Philippines Sugar Estates Development Company, acted as the representative of said corporation and the said stockholders, without consulting them, knowing full well that after he had reached a satisfactory result with Governor Taft that he could dispose of the said property by reason of the fact that he held in his own hands a majority of the votes and could make such disposition as he saw fit without reference to their wishes and against their express desires. At the time of the purchase of the shares of the plaintiff, the defendant well knew that the said stocks had a value far in excess of that which he paid. He thereby, by his own acts, made it possible for him to receive a large sum of money for his own benefit to the detriment of the plaintiff. A director or a general manager of a corporation cannot make profits out of his principal, for whom he has undertaken to act, in the business of his agency. If he does make a profit while acting as such agent or in such fiduciary relation, the princi-
285 pal may apply to the courts and have such profit declared to be his.

Simons *vs.* Vulcan Oil and Mining Co., 61 Penn. State, 202. 100 American Decisions, 628.

In this latter case Thompson, Chief Justice, said:

"Directors (of a corporation) are but the agents and trustees of the company; they have power only to act for the interest of the company and not against it."

In the case of Bliss *vs.* Matteson (45 N. Y. 22) the Supreme Court of New York said:

"The directors of a corporation are the trustees of the stockholders, etc." "Any agreement to influence their action for the benefit of others and to the prejudice of the company is fraudulent and void."

The question of the liability of the directors of a corporation to the stockholders was squarely presented to the Supreme Court of New York in the case of Rothmiller *vs.* Stein (143 N. Y. 581). In that case the plaintiff held a large number of stocks in the corporation of which the defendant was the president. Certain persons offered to buy some of the stocks held by the plaintiff, offering to pay for them $80.00 in cash per share or $50.00 in cash per share and $50.00 additional upon a day subsequent, providing a dividend of ten per cent. should be declared on or before such subsequent day. The plaintiff, before accepting such offers, made inquiry of the defendant concerning the status of the business of the corporation and received from the defendant the information that the business of said corporation was prospering and had increased enormously, and that much larger dividends than 10% would be declared at the annual meeting. Upon this information received from the defendant, the president of the company, he accepted the second offer, to wit, $50.00 in cash
286 and $50.00 more per share to be paid at a subsequent day if the annual dividend amounted to 10%.

At the time the defendant made these representations to the plaintiff the fact was that the company was largely in debt and actually

insolvent, and consequently the dividend of 10% upon which the plaintiff was to receive the additional $50.00 per share for his stock was never declared, and as a consequence of which the plaintiff lost the $50.00 per share which he would have received had the representations of the defendant been true. The plaintiff brought action against the defendant, the said president, to recover from him the difference between what he actually received for his stock and the amount which he would have received had the statements of the defendant been true. To the complaint of the plaintiff the defendant filed a general demurrer. In passing upon the demurrer, Mr. Justice Peckham, now of the Supreme Court of the United States, said:

"We are therefore of the opinion that the complaint contains allegations sufficient to show the commission of actual fraud," and overruled the demurrer of the defendant.

In the majority opinion in the present case, it is said that Justice Peckham stated in the case of Rothmiller *vs.* Stein that the rule of *"Caveat emptor"* applied to the duty of a director of a corporation. A careful reading of the case fails to disclose any statement of that kind. Justice Peckham, however, does discuss the effect of the rule of *"caveat emptor"* in the purchase and sale of stocks as well as of other rights and obligations, but nowhere in the decision does he apply the doctrine to the case then presented to the court.

In the case of Oliver *vs.* Oliver, *et al.* (45 S. E. Reporter, 232), decided by the Supreme Court of Georgia on the 11th day of
287 August, 1903, a case very similar to the one which has been presented to this Court was decided. In that case the defendant was president and director of the Gates Oil Company. He obtained an option upon stock held by the plaintiff at $110.00 per share. This option was renewed from time to time. The option was procured in pursuance of a contemplated sale of the Oil Company's plant for $304,500.00, the company retaining other assets above the liability, which made the stock actually worth $185.00 per share. The defendant failed to disclose to the plaintiff this contemplated sale of the company's plant. Immediately after the defendant had secured from the plaintiff 658 shares of the said stock, he sold the company's plant, realizing a profit upon the shares purchased from the plaintiff equaling $49,250.00. The plaintiff instituted an action against the defendant for the purpose of recovering this amount. The defendant demurred to the petition of the plaintiff. The demurrer was overruled. Justice Lamar, in discussing the rights of the plaintiff and the relation which a director of a corporation bears to the stockholders, said:

"This brings us to a consideration of the relation which a director bears to an individual stockholder. All the authorities agree that he is a trustee for the company and in his capacity as such he serves the interest of the entire body of stockholders, as well as those of the individual shareholder, who usually cannot sue in his own name for the wrongs done the company by the officer; but the fact that he is trustee for all is not to be perverted into holding that he is under no obligation to each. The fact that he must serve the company does not warrant him in becoming an active and successful opponent of

an individual stockholder with reference to the latter's undivided interest in the other property committed to the director's care.

288 That he is primarily trustee for the corporation is not intended to make the artificial entity a fetich to be worshipped in the sacrifice of those who in the last analysis are the real parties at interest. No process of reasoning and no amount of argument can destroy the fact that the director is, in the most important and legitimate sense, trustee for the stockholder," citing Jackson *vs.* Ludeling, 21 Wallace, (U. S.) 616.

The same Judge continuing discusses the duty of a director to disclose to the shareholders all information concerning the condition of the corporation, and adds the following statement:

"If, however, the fact within the knowledge of the director is of a character calculated to affect the selling price and can, without detriment to the interests of the company, be imparted to the shareholder, the director, before he buys, is bound to make a full disclosure."

"In a certain sense the information is a quasi asset of the company, and the shareholder is as much entitled to the advantage of that sort of an asset as to any other regularly entered upon the list of the company's holdings. If the officer should purposely conceal from the stockholder information as to the existence of valuable property belonging to the company and take advantage of this concealment, the sale would necessarily be set aside."

Mr. Pomeroy, in his valuable work on Equity Jurisprudence, (2nd Edition, section 1090) says:

"Directors are not only trustees of the corporation, but also quasi or *sub modo* trustees of the stockholders, with respect to their shares of stock." If then, any sort of trustees, they are necessarily subject to the obligations and restrictions which inhere in that relation as to property entrusted to them. The shares are mere evidence of property or of the interest which the stockholder has in the property of the corporation, under the control of the directors. In

289 their sale the stockholder disposes not only of the paper which represents his interest, but his actual holdings in such property, and when the director deals with the stockholder for the purchase of shares, he is not buying paper merely but in effect is buying an undivided and substantial interest in property which has been committed to his care, custody and management, and when the stockholders elect a director for the purpose of managing the business of the corporation, the said director, when he accepts the position, thereby puts himself into the position of an agent of the said stockholders and occupies a fiduciary relation or position which is not altogether unlike the relation which attorneys, bailees, partners, trustees or any other fiduciaries occupy, and must exercise the highest degree of good faith as to all matters connected with the property committed to his care.

In many instances a stockholder of a corporation who happens to own a majority of the stock elects himself as a director of the same and thereby, by virtue of such majority stock, controls the policy of the corporation, decides what may or may not be done in the management of the corporation, and cases are not infrequent where such

director so mismanages the affairs of the corporation that the stock of such corporation becomes absolutely worthless. If such mismanagement is due to misjudgment, the stockholders are simply unfortunate in being related in business affairs with a man of such business ability. If, however, the conduct of such a director is fraudulent in his relation to the other stockholders and by virtue of such fraud he derives benefit to the detriment of the interest of the other stockholders, he must respond to them in damages to whatever amount such fraudulent conduct has injured them.

2nd Pomeroy's Equity Jurisprudence, 2nd Edition, section
290 963.
Stubinger *vs.* Frey, 116 Ga. 396;
42 S. E. Reporter, 713.

The suppression of the truth by one whose duty it is to speak may amount to a suggestion of falsehood; and such suppression is made with intent to deceive or to gain advantage when he is bound in good faith to disclose, this is evidence of and equivalent to a false representation.

Stewart *vs.* Wyoming Ranch Co., 128 U. S., 388.
Coulton *vs.* Leland Stanford, 82 Cal. 351;
23 Pacific Reporter, 316;
16 American State Reports, 137.

In the cause of Stewart *vs.* Harris (77 Pacific Reporter 277) decided June 11, 1904, there was presented to the Supreme Court of Kansas a question very similar to the one which we are now deciding. That was an action by a stockholder of the Wellington National Bank to recover of the president of said corporation the difference between the amount which the plaintiff had received for his stock in the said corporation and the actual value of said stock at the time he sold the same to the said president. The plaintiff, for his cause of action, alleged that the defendant had withheld from him at the time of the purchase of the stock certain information which it was his duty as president of said corporation to disclose; in other words, the plaintiff claims that the president withheld certain information concerning the real financial condition of the corporation which it was his duty to disclose to the stockholders when he, the president, was attempting to buy their stock. In deciding that question, the Court said:
291 "The managing officers of a corporation are not only trustees in relation to the corporate entity and the corporate property, but they are also, to some extent, and in many respects, trustees of the corporate stockholders. That they are trustees for the corporation and the corporate property all the authorities are agreed. It would be difficult to lay down a general rule comprehensive of the extent of all instances in which their trusteeship exists as to the stockholders of the corporation."

The relation between the directors of a corporation and its stockholders is that of trustee and *cestui que* trust. Directors are persons elected to manage the business of the company for the benefit of the shareholders. It is an office of trust which, if they undertake it, is

their duty to perform fully and entirely. No director of a corporation or company can use his position to secure personal advantage to himself.

Sargeant *vs.* Railroad Company, 48 Kansas, 672.
29 Pacific Reporter, 1063.

If then this is the relation between the managing directors of a corporation and the stockholders of said corporation, the general rule applicable to the purchase and sale between parties who sustain to each other a financial or fiduciary relation is applicable. That rule is, in order for a purchaser or a director who purchases stock from the stockholders to be able to sustain the purchase, he must show affirmatively that the transaction was conducted in perfect good faith, without pressure or influence on his part and with express knowledge of the circumstances and entire freedom of action on the part of the stockholders.

Dunn *vs.* Dunn, 42 N. J. Equity, 431.
7 Atlantic Reporter, 842.

292 In the case of Goodwin *vs.* Cincinnati *et al.* Canal Co. (18 Ohio State, 169), the Supreme Court of Ohio said:

"A director of a corporation represents the stockholders and their interests as such; he is a trustee for the company and whenever he acts against their interest, no matter how much he thereby benefits foreign interests of individual stockholders, or how many individual stockholders act with him, he is guilty of a breach of trust, and a court of equity will set aside his acts at the instance of the stockholders or creditors who are damnified thereby. Any act of directors by which they intentionally diminish the value of the stock or property of the company is a breach of trust for which any of the stockholders or creditors may justly complain."

U. S. Rolling Stock Co. *vs.* Atlantic *et al.* Railroad Company, 34 Ohio State, 461.
Hodges *vs.* New England Screw Company, 53 American Decisions, 646.

In the case of Janney *et al.* *vs.* Minneapolis Industrial Exposition *et al.*, (50 L. R. A. 273), decided by the Supreme Court of Minnesota May 25th, 1900, the Court said:

"The relation between the corporation and its directors is that of principal and managing agents. They are not trustees in the sense of holding legal title to any of its property for its benefit or that of its stockholders or its creditors. Still the relation is essentially a fiduciary one, and upon sound principles of public policy, directors are inhibited, as a general rule, from purchasing for their own benefit the property of the corporation, very much as a trustee is disqualified from purchasing for his own advantage the property of his *cestui que* trust. This proposition upon principle and
293 authority is unquestionably the law.

"In all cases where a director purchases stock of a stock

holder he must act in the utmost good faith for the transaction will be jealously scrutinized."

1 Marowitz Private Corporation, Section 527;
3 Commentaries on the Law of Corporations by Thompson, Sections 4068 and 4074.
Barber *vs.* Bowen, 47 Minn. 118.
Lusk's Appeal, 108 Penn., 152.

In the case of Twin Lick Oil Company *vs.* Marburg (91 U. S. 587), Justice Miller, of the Supreme Court of the United States, said:

"That a director of a corporation occupies one of those fiduciary relations where his dealings with the subject matter of his trust or agency and with the beneficiary or party whose interest is confided to his care is viewed with jealously by the courts and may be set aside on slight grounds is a doctrine founded on the soundest morality and which has received the clearest recognition in this court and in others."

Koehler *vs.* Black River Falls Iron Co., 2 Black (U. S.) 715.
Drury *vs.* Cross, 74 U. S., 299.
Luxembourg Railroad Co. *vs.* Maquay, 25 Beav. (English) 586.
Cumberland Company *vs.* Sherman, 30 Barber (N. Y.) 553.

In the case of Walsham *vs.* Stainton (1 De Gex. J. and S. 678), cited by Judge Taft in the case of Richey *vs.* McMullen, (79 Fed. Rep. 522, 534), the facts charged by the plaintiff were as follows:

Joseph Stainton was the manager and Henry Stainton the London — of the Carron Company, a corporation. The Staintons entered into a conspiracy to secure to themselves the whole benefit of the company, etc., etc., keeping the accounts of the company
294 fraudulently, so as to conceal from the shareholders the real value of the shares, in order that they themselves might buy up at an under value such shares as were offered for sale, and at the same time make themselves a majority of the votes of the meetings of the company. To carry out this plan the Staintons retained in their hands large funds belonging to the company, which never appeared in the earnings and so reduced the dividends. By these means the market value of the shares of stock was kept much below their real value. As a result Henry Stainton purchased forty shares and one of his co-conspirators fifteen shares at a price much below a fair value. When these facts were discovered the company compelled the Staintons or their representatives to account for the large amount of money retained by them; the representatives of the sellers of the stock filed a petition to compel the return of the stock still held by Henry Stainton's representatives, and to compel the estate of Joseph and Henry Stainton to make good the difference between the price at which the fifteen shares of stock now in the hands of an innocent purchaser had been sold to Joseph Stainton and its real value, and to compel an accounting for all dividends received from the stock since the sale. To this petition the defendants filed a demurrer, which was sustained in the lower court, but

on appeal the House of Lords reversed the ruling of the lower court and held that the appeal constituted a *good ground for relief and* that each wrongdoer might be compelled to make good to the defrauded owners of shares the loss, without regard to his having profited by the fraud. Judge Taft, in commenting upon this decision, stated:

"This case illustrates, in quite a satisfactory way, how the managers of corporations may so conduct the affairs of the cor-
295 poration as to incur a direct liability to the stockholders in respect to their particular stock."

In the case of Jackson *vs.* Lubeling (88 U. S. 616), the Supreme Court of the United States said in substance:

"The managing officers of a company or corporation where capital is contributed in shares are in a very legitimate sense trustees alike for its stockholders and its creditors, though they may not be trustees technically and in form. They accordingly have no right to enter into or participate in any combination the object of which is to divest the company of its property and obtain it for themselves at a sacrifice; they have no right to seek their own profit at the expense of the company and its stockholders or even its bondholders."

Cases from almost every State in the Union might be cited to support the doctrine herein contended for, that the director, and especially the manager of a corporation, in his dealings with the stockholders of such corporation, acts in a fiduciary relation and is bound to act with the utmost good faith. He cannot secretly bring about conditions by which he himself will receive large benefits at the expense of the stockholders. If he does, he is liable to respond to them for whatever injury his secret and fraudulent acts have done them. He is not prohibited from dealing in the stock of the corporation, but if he does, he must do so honestly and aboveboard.

McClure *vs.* Law, 161 N. Y., 78; 76 Am. Reps. 262.

Goodhue Farmers' Warehouse Co. *vs.* Davis, 81 Minn., 210; 83 N. W. Rep. 531.

Briggs *vs.* Spaulding, 141 U. S., 146.

The North Hudson Building Co., etc., *vs.* Chiids, *et. al.*, 82 Wis., 460; 83 Am. State Reps., 57.

Killen *vs.* State Bank, 106 Wis. 546; 82 N. W. Rep., 536.

Marshall *vs.* Farmers' etc. Bank, 85 Va. 676; 17 Am. State Reps. 84.

296 & 297 Ellis *et al. vs.* Ward *et al.*, 137 Ill., 509.

It is not contended that the directors or manager of a corporation are liable to the stockholders when they exercise ordinary care, skill and diligence in the management of the affairs of the corporation and loss occurred. They are not liable for errors of judgment and mistakes of fact or of law when they act in good faith and with proper care. They are liable, however, when by their secret connivance or by fraudulent conduct they have made great profits at the expense of the stockholders.

Farmers' Trust & Loan Co. *vs.* The New York and Northern Ry. Co., 150 N. Y., 410;

Deaderick *vs.* Wilson, 55 Tenn. (8th Baxter) 108.

The Court has voted to reverse its first decision in this case upon *the ground that the new evidence* presented shows that Jones had full authority to dispose of the said stock of the plaintiff. Under the view which I take of the case it is of no importance whether the defendant purchased the stock of the plaintiff or of her agent. The defendant owed the same fidelity to the agent of the plaintiff that he owed to the plaintiff. The defendant well knew that Jones was attempting to act as the agent of the plaintiff.

If, however, the question here presented is to be decided upon the fact that Jones had or had not *express* authority to *sell* the said stock of the plaintiff, then I contend that the document introduced as evidence in the rehearing does not give Jones *express* authority to *sell* the stocks in question here.

The judgment of the lower court should be affirmed with costs.

(Signed) E. FINLEY JOHNSON.

298 & 299 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

ELEANOR ERICA STRONG, and HER HUSBAND, Plaintiffs and Appellees,

vs.

FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

Judgment.

December 7, 1906.

Book of Judgments 4, Fo. —.

Register No. 2101.

This Court having acquired the proper jurisdiction to take cognizance of the above entitled cause, which has been submitted by both parties for decision, this Court having considered the same upon the record herein, and decision and order for judgment having been recorded on the 15th day of November, 1906;

By virtue of said order, the order of this Court to the effect that judgment be entered is hereby declared of no further effect, and the judgment of the lower court is hereby reversed, the defendant being declared not liable under the complaint, and the said cause is hereby dismissed finally, with the costs of the lower court against the plaintiff, this Court making no special order as regards the costs incurred upon this appeal.

It is further ordered that —— —— recover of —— —— the sum of ——, by way of costs.

[Seal of the Supreme Court.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

300 And thereafter, to wit, on the twelfth day of December, nineteen hundred and six, the same being one of the regular juridical days of said July, nineteen hundred and six, term of said Court, at which there were present the Honorable C. S. Arellano, Chief Justice, and the Honorable Associate Justices Victorino Mapa, Florentino Torres, E. Finley Johnson, A. C. Carson, Charles A. Willard, and James F. Tracey, Mr. J. E. Blanco, Clerk, and others, came said plaintiffs and appellees, by Kinney, Odlin and Lawrence, their attorneys, and presented their bill of exceptions herein, and the Court, having examined said bill of exceptions, made an order which, translated into English, reads in words and figures as follows, to wit:

"The plaintiffs and appellees having filed a bill of exceptions in Case No. 2101, Strong *vs.* Francisco Gutierrez, the Court decided to approve and admit the same, which shall be signed and sealed by the Honorable Chief Justice of this Court."

Which bill of exceptions reads in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2101.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellees,
vs.
FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

Bill of Exceptions.

Be It Remembered, That thereafter, to wit, on the 28th day of April, 1905, at a regular term of said Court begun and holden
301 in Manila, in the Philippine Islands, said cause, having theretofore been submitted to the Court on the bill of exceptions and the briefs and arguments of the respective counsel, came on for decision, and thereupon said Court, four of the Justices thereof concurring, rendered a decision in words and figures as follows, to wit:

(Title and Heading.)

"TRACY, *J.*:

"This action was brought to recover eight hundred shares of the capital stock in the Philippine Sugar Estates Development Company, limited, an anonymous society formed to hold the Dominican Friar Lands.

"The shares were the property of one of the plaintiffs, Mrs. Strong, as part of the estate of her first husband, and we shall for clearness hereinafter apply the word plaintiff to her alone. They were pur-

chased by the defendant through a broker who dealt with her agent, one Jones, who had the script in his possession and who made the sale without the knowledge of the plaintiff. The defendant was a director, was the managing agent, and was in his own right the majority stockholder of the society.

"The plaintiff proceeds on two theories:

"First. That her agent had no power to sell or deliver her stock in the Philippine Sugar Estates Development Company, Limited; and

"Second. That its sale, through her agent, was procured by fraud on the part of the defendant.

"The script was payable to bearer and had, ever since its issue, been in the possession of Jones, who was acting gratuitously as agent for the plaintiff, not only under a written power special in terms to collect money, but also as general agent managing all her business under a parol employment, the precise terms of which are
302 not in evidence. He held other securities for the plaintiff and had on one prior occasion, at least, without special instructions sold another of her stocks, understanding that the act was within the scope of his general agency.

"By Article 1712 of the Civil Code, the nature of general and special powers is defined. Article 1713 reads:

"'An agency stated in general terms only includes acts of administration. In order to compromise, alienate, mortgage, or to execute any other act of strict ownership, an express mandate is required.'

"Such a mandate may be either oral or written, may stand by itself or may be included in the general power; the one vital thing being that the right to sell shall be expressed or shall be a necessary ingredient of the power that is expressed (Fuzier-Herman Repertoire, Title 'Mandat', Arts. 153, 166, 167, 175 and 176.)

"The only express commission in evidence to dispose of this or any stock is found in an interview between the plaintiff and Jones on the Luneta, in Manila, before this negotiation in which she told him, speaking of her shares, 'not to part with them until I got their face value.' This bald statement is the only evidence on this point. If in its negative form it is sufficient to constitute an express or special power to sell, it cannot be severed from the limitation as to price bound up in the same sentence with it; the limitation is as much a parcel of the grant as if both had been found in one written instrument, and one part cannot be given effect without the other, unless one part only was brought to the knowledge of the defendant. There is no claim that he ever heard of this conversation. The sale was, in fact, made at a price much under par. While, however, thus in themselves barred from operating as constating terms of a grant of power, yet the words have their effect as evidence of a preexisting power understood between the parties to which they plainly
303 refer. In our judgment, however, even when taken in connection with the other facts in the case, they do not sufficiently define the power. The sale by Jones of another stock at another time, his possession of the shares, and the reference of the broker to him by the plaintiff's husband, add force to them. But all these things fail to reveal the terms of the preexisting power; it may

have been general or special, it may have been express, but on the other hand it may have been, as indicated by the evidence, merely assumed by the plaintiff and Jones to follow as a matter of course from his general power of administration. This would lead to the very assumption prohibited by Article 1713. It is also apparent that the general management of the plaintiff's property did not necessitate incidentally the sale of stock. We fail to find, therefore, proof of an effective power given to Jones to dispose of this stock. The difficulty with this branch of the case is the scantiness of the evidence; the documents have been destroyed and the declarations of the parties are brief and it would be impossible to imply an express power from them, without assuming facts of which no sufficient evidence exists.

"These principles are established in the civil law of Europe, as well as in the common law of America, that acts of agents, beyond the limitation of their power, are null; that third persons deal with them at their peril and are bound to inquire as to the extent of the power upon which they rely; that where neither the actual power nor the appearance of it for which the principal is responsible exists, a third party is not protected without such inquiry. In this case the defendant is not shown to have any inquiry whatever, but apparently relied unquestioningly upon Jones' assumption of authority
304 and took his risk in so doing.

"It is urged, however, that we should apply the doctrine known in American jurisprudence as 'estoppel', whereby a party creating an appearance of fact which is not true is held bound by that appearance as against another person who has acted on the faith of it. A similar doctrine finds place in the Civil Law. By Article 1989 of the French Code, corresponding with Article 1719 of our Civil Code, it is provided that an agent cannot do anything beyond the limit of his power. In commenting upon this, Dalloz, after laying down the admitted proposition that the acts of an agent beyond his limited powers are null, states three qualifications whereby the principal is held bound:

"First. Where his acts have contributed to deceive a third person in good faith:

"Second. Where the limitations upon the power created by him could not have been known by a third person; and

"Third. Where he has placed in the hands of the agent instruments signed by him in blank. (Jurisprudence Generale, Vol. 10, Title 'Mandat', Article 142.)

"The negotiation for this stock was opened with a written inquiry from defendant's agent, through a broker named Sloan, whether the shares were for sale. In reply, in a letter written by plaintiff's husband, he was referred to Jones, with whom he was directed to consult, 'as he had the shares in his possession.' The letters were not produced, and it is not clear whether the inquiry was addressed to the plaintiff or to her husband. The latter testified that it was made known to her, but not so of the fact of the reference to Jones.

"In all this there is nothing at variance with either theory; while the reference may have been made with a view to a sale, it was not

inconsistent with the office of Jones as the general administrator and the advisor of the plaintiff, and is by the plaintiff's husband stated to have been a direction to consult and not to negotiate. Had the defendant made inquiry, as was incumbent on him, as to the extent of the agent's powers, he might not have been enlightened by Jones, who understood that his general administrative authority covered a sale; had he, however, required the production of the existing written power of attorney from the plaintiff, that, upon inspection, would have been sufficient to send him for further assurance to the grantor of the power and no misunderstanding could have arisen. The defendant knew who the principal in the case was, as he commissioned his agent to buy this particular stock for him, and the broker thereupon applied to the plaintiffs. For these reasons, we cannot find in the proofs either acts contributing to deceive the defendant or limitations upon the power of attorney which could not have been made known to him. Nor do we discover the third qualification of the general rule stated by Dalloz. In the commentators and jurisprudence of the civil law, it is uniformly required that to bring this doctrine into operation, the instrument to be negotiated shall be signed in blank by the owner. (Fuzier-Herman, Title 'Mandat', 712).

"In this instance the securities, although payable to bearer and negotiable, were not signed in blank; the distinction is obvious, the reason for the rule resting in the fact of the signature expressing an affirmative intention on the part of the owner that the agent shall have the disposition of the securities. Where the instrument is by its terms at the outset payable to bearer, there is no such expression of intention and the possession of such an instrument is consistent with the mere power of management. Moreover, the defend-
306 ant was aware that Jones had long had these shares of stock in his possession for the purpose of voting at meetings of shareholders. Consequently the defense of estoppel fails.

"It is also contended that the defendant was protected in his purchase by the provisions of the Code of Commerce. This stock was, pursuant to the charter of the company, payable to bearer, and was therefore transferable by delivery. (Code of Commerce, Arts. 165 and 545). The third subdivision of Article 545 provides in relation to such securities:

"'They are not subject to restitution if negotiated on exchange, with the intervention of a licensed agent, and where there is no such agent, with the intervention of a notary public or a person discharging his duties, or a commercial broker.'

"The effect of this provision is to confirm the title and transfer of even lost or stolen securities, except where the owner protects himself by the procedure provided in a subsequent section of the Code.

"We may take judicial notice of the fact that there is no 'exchange' in the Philippine Islands, as indeed is plain from the various articles of the Spanish Code of Commerce specifically made applicable to these Islands. There is high authority, as well as cogent reason, for the construction of this article which enables a commercial broker to act wherever there is no exchange. (See Opinion of the Supreme

Court of Justice, May 30, 1895, Gaceta de Madrid, September 10, 1895.)

"Sloan, through whom this sale was made, testified that he was a general broker and kept books under the Code of Commerce. There is no proof that he had ever held a commercial license, or that there was in Manila or in the Islands any association of commercial brokers that could have licensed him as such. The office is a technical one of special power and privilege, created under Title VI of Book I of the Code of Commerce, calling for
307 strict proof of the conditions of its existence. Even if the character of this broker had been given him by a proper license under the Spanish system, the evidence fails to show it. There is nothing before us requiring us to declare the present effect of this article of the Code.

"Although our conclusion on this branch of the case entitles the plaintiffs to recover, we deem it opportune to consider the second cause of action, based upon the affirmative conduct of the defendant, alleged to be fraudulent. The Civil Code provides that consent gained by deceit shall be void (Article 1265) and that there is deceit when by 'insidious machinations' a person is induced to execute a contract. (Article 1269.)

"The machinations with which the defendant is charged consist in the suppression of his identity while negotiating for the stock and when paying for it and also of his intention as majority stockholder in the company to close the negotiation then pending with the Government for the sale of the Friar Lands owned by the company. The prospect of such a sale would have materially affected the price of the stock. This negotiation and the defendant's management of it in behalf of the vendors was known to Jones and had been for some time a matter of public notoriety and newspaper comment in the Islands.

"Neither the plaintiff nor her agent applied to the defendant for information or communicated with him in any way. Nor is the defendant shown to have put forth statements, either in public or in private, for the purpose of influencing the sale.

"In the action of the defendant we find nothing not permissible as against a holder of stock for sale, unless a peculiar duty on his part arose by reason of his office in the association, which was an anonymous society formed in the year 1900 under the Code of Commerce. He was its managing director and conducted these
308 transactions without formal authorization by his society, but after informal discussion at the directors' meeting. He was also in person the holder of a large majority of the stock, thus not only controlling the process of the treaty with the Government through all its stages, but also its ultimate result by his own vote in the shareholders meeting.

"Did his knowledge of what was being done and what would be done incapacitate him in dealing with a fellow stockholder not so enlightened? Was he in duty bound to disclose either his information or his intention or even his identity?

"On this point, counsel have discussed quite fully the American

cases on corporation law. The question has been answered in conflicting senses in the United States. In two decisions cited by the appellee, it has been held that a director and majority stockholder must disclose his information to another stockholder before buying stock from him; that such information is an asset of the company and that the relation of a director to a member of the company is that of trustee, not only in respect of corporate property directly under his control, but also of the individual stock in the hands of the member.

"Oliver *vs.* Oliver, 118 Ga. 362;
"45 S. E. Reporter, 232.
"Stewart *vs.* Haynes, Supreme Court of Kansas.
"77 Pacific Reporter, 277.

"Such does not appear to be the older doctrine, which is quite to the contrary. The cases are collected in Deaderick *vs.* Wilson, 67 Tenn., 108, and in Commissioners *vs.* Tippecanoe Co., 45 Ind., 509.

"In Smith *vs.* Hurd, 12 Metcalf, 371, the Massachusetts court denied the legal privity of directors with shareholders.

"In Slee *vs.* Bloom, 20 Johns. (N. Y.) 669, it is ruled that they are not trustees for the individual stockholders.

309 "In Rothmiller *vs.* Stein, 143 N. Y. 581, directors were held liable for false information as to solvency furnished inquirers who, in reliance upon it, had foreborne to sell their stock to advantage. The duty of a director and the qualification of the rule of 'caveat emptor' are laid down in the opinion of Judge Peckham.

"In Richey *vs.* M'Mullen, 79 Fed. Rep., 522, Northern Ohio Circuit, Judge Taft rested the liability of a director to a shareholder, not upon his general duty as a director, but upon the special relation, on the facts before him, as pledgee of the stock, creating a privity between them. In reviewing an English decision where the company managers had conspired to conceal facts in order to effect the purchase of the plaintiff's stock, Judge Taft says:

"'In the case cited the liability arose because of the relation between the corporate managers and stockholder of vendees and vendor of the stock. In the case at bar, it arises because of the relation between the corporate managers and the stockholders of pledgee and pledgor of the stock.'

These American cases are instructive as throwing light on the controversy over the duty of corporate managers to members, but the litigation before us must be controlled by the principles of our own civil jurisprudence. While up to a recent date we have had no private corporations, so termed in our statutes, we have their likeness in anonymous societies or partnerships. The essential concept of a corporation is a legal entity endowed with succession of membership and merging in itself the primary individual liability and right of the associates. All these qualities are possessed by anonymous societies. Individual liability is completely extinguished, the membership is determined by ownership of stock and the administrators are chosen by stockholders. They are declared to be mandatories

of the society (Code of Commerce, 156) and they are also
310 responsible to the individual stockholders. (Dalloz Société, Arts. 1499 and 1539.) But nowhere do we find their responsibility extended beyond the corporate property actually under their control. It is not suggested that they owe any duty to the members in respect of their individual stock, which is fully recognized as separate property, whose character and transmission is provided for in laws peculiar to it. This appears to be the limit of their responsibility under the law governing this case. Article 1459 of the Spanish Civil Code reads:

"'The following persons cannot acquire by purchase, even at public or judicial auction, either in person or by an agent:

"'The tutor or protutor, the goods of the person or persons who are under his tutelage;

"'Mandatories, the property with the administration or alienation of which they have been charged.'

See Manresa's Commentary on this Article, Vol. 10, page 100.

"Their accountability is thus expressly confined to property 'with the administration or alienation of which they are charged.' They are not charged with the administration or alienation of the shares in the hands of members, and in respect of them they are not mandatories and hold no trust relation to the owners.

"The members have no title to the corporate property as such, which, on the contrary, is distinct from the shares held by them. The right of the associate in a society is only in effect the right to an interest remaining after liquidation and not an actual and active ownershsip in the objects which compose the social property. (Fuzier-Herman Société, Art. 502. See also Arts. 475 and 505.)

"Consequently, the defendant violated no duty in not communicating to the plaintiff his purpose in buying her shares and has been shown guilty of no fraud.

311 "It is not entirely clear from the evidence whether the claim of the defendant that he bought the plaintiff's stock not in his own right but in behalf of his brother in Spain, to whom it was forwarded, has been abandoned or not. It appears to be assumed and was conceded by counsel on argument that the purchase was made for himself and it has been so treated in this opinion. If, however, the purchase was for the benefit of his brother, that might affect any obligation that he might have been under arising out of the office of administrator of the society, but it could not avoid the failure of title to the stock by reason of a lack of power in the agent who undertook to sell it. Knowledge on the part of the defendant would have bound his principal under such a general commission.

"The decision of the Court of First Instance is sustained on the first ground stated, although not on the second, and after a period of twenty days has elapsed, judgment will be entered in accordance with this decision.

(Signed) JAMES F. TRACEY.

We concur:

(Signed) FLORENTINO TORRES.

(Signed) CHARLES A. WILLARD.

Mr. Justice Johnson took part in the trial and in the voting, and concurred in the disposing part of the foregoing decision. Mr. Justice Carson took no part.

(Signed) J. E. BLANCO,
Clerk Supreme Court, P. I.

(Chief Justice Cayetano Arellano filed herein a dissenting opinion, which was concurred — by Mr. Justice Victorino Mapa, and which is herein inserted at the suggestion of Mr. Justice Tracey, and reads in words and figures as follows, to wit):

312 "We regret that we are constrained to dissent from the brilliant and well-reasoned decision of the majority. It is beyond a doubt conclusive from the principal point of view from which the question has been considered. A contract executed by an agent without the previous authorization or subsequent ratification of the principal is unquestionably void. An act of conveyance by an agent without the express authority of the principal is prohibited by our law.

"But the essence of the question appears to us to be different. It appears to us that the first purchaser did not deal with the vendor as though the latter were an agent, or if he was under this impression, it is not clear that the previous authorization of the principal was not given to the agent.

"Kauffman, the first purchaser, addressed himself to the broker, Mr. Sloan. The latter, in turn, applied to Mr. Strong, the second husband of Mrs. Eleanor Erica, formerly the wife of Mr. Andrews, the original owner of eight hundred shares of the "Sugar Estates Development Company, Limited." Mr. Strong referred Mr. Sloan to Mr. Jones, so that he might deal with the latter. Mr. Sloan and Mr. Jones had the matter under consideration for some three weeks. Mr. Sloan made several proposals to Mr. Jones until finally, after this not inconsiderable lapse of time, a price was agreed upon, and the contract was perfected in the office of the broker, Mr. Sloan, and consummated by the delivery by Mr. Jones and Mr. Kauffman respectively of the stock and the price. This was on the 10th of October, 1903. The remaining days of October, and all of November and December, passed. All the parties were present in this city—Mr. and Mrs. Strong, Messrs. Jones, Sloan and Kauffman. During this period Kauffman had sold the stock to D. Francisco Gutierrez, the second purchaser.

313 "The complaint was not presented until the 12th of January, 1904, and then not by the vendor, Jones, against the purchaser, Kauffman, but by Mr. and Mrs. Strong, who allege that their relations with Mr. Jones were those of Bailor and Bailee, and agent and principal; but against whom, nevertheless, they have not brought their action, but against a third person, who has had no relations whatsoever with Mr. and Mrs. Strong. And this action is brought by them against a stranger, not against the only person who could be responsible to them for damages, if any, from which an action concerning the stock alleged to be the object of the bailment and agency might arise,—and they allege as to this third person,

who is Gutierrez instead of Kauffman, that he acted fraudulently, thereby, as they allege, vitiating the sale; and it is upon this aspect of the case principally that the Judge below entered his decision, which is in part as follows:

"'Therefore, the Court declares: that the purchase of these shares by the defendant was fraudulent and void, and the Court orders that the same be annulled and considered void. The present value of each share of the "Philippine Sugar Estates Development Co." appears to be one hundred and ninety pesos and sixty-four centavos, Philippine Currency. By that calculation the following is arrived at: The lands of the "Sugar Estates Co." were sold for the sum of eight million six hundred and seventy-one thousand six hundred and fifty-seven dollars. The other companies paid to the "Sugar Estates Co." the sum of three hundred and thirty-five thousand dollars, making a total of four million six hundred thousand six hundred and fifty-seven dollars, United States currency, received by the "Sugar Estates Co." for the sale of these lands. The liabilities of the company seem to be undetermined, but it appears that they are completely covered by the hacienda excluded from the sale. Therefore the Court will consider the liabilities covered by this parcel of land in dictating its judgment: there were issued forty-two thousand and thirty shares of the "Sugar Estates Co.," and therefore each share would have a value of ninety-five dollars and thirty-two cents, United States currency. Therefore the 800 shares referred to amount to seventy-six thousand two hundred and fifty-six dollars, United States currency, or one hundred and fifty-two thousand five hundred and twelve pesos, Philippine currency. From this sum there must be deducted the amount of sixteen thousand pesos, Mexican currency, which the defendant paid to Jones, and which Jones deposited to the credit of the plaintiff. No proof was presented on the trial as to the value of Mexican currency, as the law requires, and the Court must take judicial notice of the rate of exchange fixed by authority
314 of the Government, which at the present date is 1.13. Therefore sixteen thousand pesos, Mexican currency, will amount to fourteen thousand one hundred and fifty-nine pesos and twenty-nine céntimos, Philippine currency. Deducting this amount from the value of the 800 shares, there will remain one hundred and thirty-eight thousand three hundred and fifty-two pesos and seventy-one céntimos, Philippine currency.

"'Therefore, the Court orders that the plaintiff recover of the defendant said sum of one hundred and thirty-eight thousand three hundred and fifty-two pesos and seventy-one céntimos, Philippine currency, and the costs of this suit. The Court orders further that the foregoing judgment may be satisfied by the delivery to the plaintiff, Eleanor Erica Strong, of her said 800 shares within forty days from this date, in which case the plaintiff shall pay to the defendant $16,000 pesos, Mexican currency, or its equivalent in Philippine currency. It further appears to the Court that 800 shares, the property of the defendant in this cause, were attached and are now in the hands of the Sheriff of the City of Manila. The Court therefore orders that, in case the judgment rendered in this case is not satisfied

at or before the termination of the forty days from this date, said Sheriff of said City of Manila, P. I., sell said 800 shares thus attached after publishing the same as is required by law, and that he apply the product to the payment of the foregoing judgment and of all the costs.

"'Manila, April 29, 1904.

(Signed) BEEKMAN WINTHROP, *Judge*.'

"This judgment cannot possibly be affirmed.

"All the acts which have given rise to this litigation having been effected under the laws of the Philippine Islands, in accordance with these laws must the case be determined.

"Even supposing that a judgment might be rendered against the defendant, we cannot see how, in a revindicatory action, which presupposes the obligation to deliver a specific thing, a judgment for the payment of a certain sum of money,—which is peculiar to obligations which consist in the performance of some act—can be entered primarily. The revindicatory action, the subject of which must be some specific and determinate thing, in this case should be limited to the 800 shares which, in their series and according to the stub book, were issued, although payable to bearer, in favor of Mrs. Eleanor Erica Strong's first husband. These shares should be specified in the complaint, as everything not generic should be specified.
315 To this end the Code of Commerce prescribes that shares of mercantile companies shall be enumerated and extended in stub books (Art. 163), and to the same end it is prescribed by the same code that in case of loss 'the owner should indicate the name, the nature, the nominal value, the number, if any, and the series of the certificates.' (Art. 549.) In a revindicatory action the first thing to be determined is the thing which should be delivered up in case of a judgment against the defendant, and only subsidiarily and in defect of such delivery can judgment be entered for the value of the thing, which is considered as standing in its stead. Furthermore, even supposing that that which stands first in the judgment were that which should, according to law, stand first and not merely optionally, as would appear from the terms of the judgment, it is impossible to affirm the first conclusion of the judgment, to the effect that the plaintiff recover from the defendant the sum of P138,352.71, Philippine currency, as there is no allegation in the complaint, nor has any evidence been offered at the trial, upon which to base such a finding. Nor is it possible to accept as a basis of a final decision the assertion that 'the actual value of each share of the Philippine Sugar Estates Development Company *appears* to be P190.64, Philippine currency,' followed by calculations which are neither alleged by the plaintiffs in the complaint, nor during the course of the trial have been agreed to or even proven.

"But disregarding this feature of the judgment, it is of importance to examine the reasons upon which the decision is based.

"1. Fraud or deceit, and the lack of an express authority on the part of the selling agent, are the two legal grounds established in the judgment appealed.

316 "(*a.*) Fraud. In the decision we find no other reasoning than this: 'Art. 1263 of the Civil Code provides: "Consent given by reason of error, violence, intimidation, or fraud, shall be void." Article 1269: "Deceit exists when, by means of insidious words or machinations on the part of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have made." The Court believes that the acts of the defendant in concealing what he was under an obligation to reveal, and in adopting the measures which he did adopt to carry the concealment into effect, are equivalent to insidious machinations.' (Bill of Exceptions, p. 14.)

"It is absolutely impossible for this Court, in reason and justice, to subscribe to this reasoning. In the first place, deceit, according to the article cited, No. 1269, must be some positive act, *insidious words or machinations*, 'which include false promises, the exaggeration of hopes or benefits, the abuse of confidence, the use of pretended names, qualities or powers, the thousand forms, in fine, of deceit, by which one may be misled and a vitiated consent obtained, without its being necessary that such proceedings constitute "estafa" or otherwise fall within the domain of the Penal Code.' (Manresa, Vol. 8, page 623.)

"Throughout the course of this trial no evidence has been offered of any fact tending to show that the vendor, Jones, was in any way misled for the purpose of obtaining from him consent which he would not otherwise have given. This appears from the decision itself; the supposed deceit consisted in refraining from revealing facts which should have been revealed. In the second place, the Judge's decision does not state who was the deceiver and who was the deceived.

317 The contracting parties were Kauffman and Jones. Even if we take it for granted that Kauffman contracted as a go-between for Gutierrez, between Kauffman or Gutierrez as purchaser, and Jones, as vendor, there was a perfect meeting of minds as to the purchase of the 800 shares in consideration of the sum of 16,000 pesos through the mediation of the broker, Sloan, in whose office the contract was entered into and executed. Against the consent so given no allegation has been made by Jones or anyone else that it was vitiated by deceit, for no one attempted to deceive him by means of insidious words or machinations, nor does it appear that anyone was deceived by such words or machinations. It is absolutely impossible to adopt the conclusion that Kauffman or Gutierrez or Sloan had made use of insidious words or machinations, of such character that they influenced Jones' mind so as to obtain from him a consent which without them would not have been given. It is absolutely erroneous to consider as consent obtained by deceit consent given upon insufficient information. It is still more erroneous to regard the consent of one of the parties as vitiated by reason of the lack of sufficient information on the part of some third person, no matter how much interested the latter may have been in the contract.

"The fraud or deceit which the Judge concludes existed consisted in 'the defendant having concealed what he was under obligation to reveal.' This is alleged in paragraph 4 of the complaint as follows:

"'4. The defendant deliberately, knowingly, wilfully and with

intent to defraud and deceive the plaintiffs (Mr. and Mrs. Strong) concealed from them the value of the said shares, and deliberately, wilfully and intentionally deprived the plaintiffs of the means by which they might have investigated the value of the said shares, for the purpose of obtaining them for a very inadequate consideration, and by reason of the facts alleged the defendant thereby defrauded the plaintiffs.' (Bill of Exceptions, page 2).

"The fact that a shareholder at any particular time is un-
318 aware of the value of his shares is imputable to him alone. This is the general rule of law, which does not excuse one's own ignorance concerning that which affect his own rights. And when some other person, as manager or representative, is under the obligation of informing the shareholders of a company concerning the value of their shares at any given time, the failure to perform this duty might give rise to rights within the company for the enforcement of any liability arising by reason thereof, but the consequences of such an admission cannot be extended beyond the liabilities peculiar to the contract by which the company was created, to other acts which may have been effected by the shareholder as a result of the ignorance of his own rights, whatever may have been the causes of his ignorance. If Mr. and Mrs. Strong themselves, instead of Jones, had made the sale now under consideration for the sum of 16,000 pesos, they could not have alleged that they were deceived by Gutierrez because the latter did not perform his duty toward them resulting from the contract by which the company was created. Whether they were the ones whose duty it was to know what was the value of their property, or whether it was Gutierrez who should have acquired this information and informed them of the actual value of the shares, is a matter which is entirely foreign to a contract of sale in which consent was freely given, without any deceit, without any information, good, bad, or indifferent, on the part of the purchaser, the result perhaps of an error on the part of the vendor by reason of the lack of this previous knowledge which is suggested and advised by even the slightest degree of care in the protection of one's own interests. It can never be said that the consent given was vitiated by deceit; even though it may have been by error, whether imputable or not to the contracting parties themselves, which latter consideration is not at present involved.

319 "However this may be, the deceit which, according to the decision, was practised, is that which, according to Article 1269, exists when 'by insidious words or machinations on the part of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have made.' Jones, one of the contracting parties, was not induced by the other—whether Kauffman or Gutierrez—to enter into the contract of sale under consideration by any other means than that of a simple offer and acceptance, as testified to by both, and also by the intermediary, Sloan. It was not preceded by insidious words or machinations of any kind whatever, for as to such there is not the slightest proof, nor even an allegation, in the record. We do not see, therefore, how into an examination into the validity and efficacy of a contract of sale between

Kauffman or Gutierrez and Jones there can be injected deficiencies or omissions which might be imputed to Gutierrez by reason of obligations on the part of the latter with respect to Mr. and Mrs. Strong in the company in which they were interested.

"Nor do we see upon this point any way by which the consent of the plaintiffs may be regarded as vitiated, when they themselves say they did not give their consent nor authorize Mr. Jones nor have any dealings whatsoever with Mr. Kauffman or Mr. Gutierrez. But we shall again revert, from another point of view, to this important fourth allegation of the complaint.

"On the other hand, the facts found by the decision as constituting fraud on the part of the defendant are: (1) That his office, being near that of Mr. Jones, Mr. Gutierrez, instead of addressing himself directly to Mr. Jones, employed Mr. Kauffman to deal with Mr. Sloan in respect to the purchase of the shares; (2) That, instead of paying
for the shares with a check of his own, he used one of Messrs.
320 Rueda Hermanos' checks and paid Mr. Kauffman 1,800 pesos
for his services; and (3) That after the shares were purchased he sent them to Spain, so as to place them beyond the jurisdiction of the Court. The mere statement of these facts is sufficient to enable one to see that consent given prior to the occurrence of the last two facts mentioned—the payment by another's check and the sending of the shares abroad—could not have been affected by them, more especially when it is considered that the consent was given in absolute ignorance as to whether Mr. Kauffman was acting on his own behalf or for the account of some other person who, after the transaction was completed, may have paid him for his services. Neither of these facts can have had any influence whatever upon the mind of the vendor, Mr. Jones, and influence of this kind it is which must be considered for the purpose of determining whether the consent expressed in the making of the contract was given knowingly, freely, and spontaneously.

"To sum up, we are of the opinion that Articles 1265 and 1269 of the Civil Code are not applicable to the case.

"(*b*) Lack of express authority on the part of the agent.

"We examine the question from this point of view merely hypothetically. It is one thing that after a sale of shares, transferable by delivery, it be alleged, proven and demonstrated beyond a doubt that the vendor was merely an agent, and entirely another thing that the purchaser of such shares is under any obligation to inquire beforehand whether the vendor is an owner or an agent, and in the latter case, what kind of an agency he has, unless some limitation appears either upon the face of the stock certificates themselves or a restricted or qualified possession appears from the Mercantile Registry, where the stub books of the certificates should be filed. (Article 21, Code of Commerce).

"The danger which the contrary theory offers is that in
321 transactions concerning shares or mercantile paper transferable by delivery a revindicatory action might be allowed, in addition to cases of concealment of the transfer, theft or loss of such paper, upon the simple allegation that the vendor was a mere agent,

and more especially when, as in the present case, the vendor, by whom the contract was effected, does not appear as a party to the suit to defend his acts as one of the defendants. A stranger to the transaction, who did not take part in the contract, now demands its annulment against one only of the contracting parties, and makes use of the other contracting party—the only one who could have damaged the plaintiffs by his acts—as a witness in support of the action, when, had he been made a defendant by reason of the loss which in such a case he would have inflicted upon his supposed principal, he, the one who has violated the terms of the supposed bailment, might have defended his conduct as no one else would be able to do.

"Mr. F. Stuart Jones, the vendor and one of the witnesses in the case, is one of the head men of the firm of Smith, Bell & Co., 'one of the most important firms of this city'; he was for some time 'a patient of Dr. Strong.' Both Mr. Jones and Mr. Wood, another one of the head men of the firm, held shares of the Philippine Sugar Estates Development Company, Limited. Both he and Mr. Wood voted in stockholders' meetings of the firm as such stockholders. One day in the month of December, 1903, Mr. Sloan, the broker, approached Mr. Strong with a view to getting shares in the company. Dr. Strong referred him, as stated, to Mr. Jones. Mr. Sloan went to see the latter in the course of the week; during the following week Mr. Sloan was visited by Mr. Jones, who made his first offer, which was not accepted by Mr. Sloan. Negotiations were then commenced which continued some three weeks, at the end of which the
322 price was agreed upon and fixed at 16,000 Mexican pesos. Immediately thereupon Mr. Knowles, an employee of the firm of Smith, Bell & Co., went to Mr. Sloan's office, the stock certificates were counted and delivered to Mr. Kauffman, from whom a check for the agreed amount was received. It has already been stated that the contract was thus executed on the 10th day of October, 1903. On the 11th Mr. Jones deposited the price received for the shares with the Hongkong and Shanghai Banking Corporation, in the account which he and Mr. Wood carried there as representatives of Mrs. Strong. A few days later Mr. Jones and Mr. Wood used this same money to purchase shares of the Chartered Bank of India, Australia and China, Mr. Jones considering himself authorized to make this purchase, as well as to effect the sale in question.

"Mrs. Strong herself as early as July, 1903, had heard a great deal of talk about the sale of the Friar Lands. 'One afternoon about half past six', Mr. Strong testifies (it subsequently appeared that this was on the afternoon of the 1st of December, 1903), 'Mr. Jones came to the house and entered into conversation with my wife and myself. I had a newspaper, the Manila Times, and I said, "I see that the Government is going to buy the Friar Land shares." Mr. Jones said, "What about it." I said, "My wife should make a good deal out of those shares." He thought a minute or two and then he said, "Your wife has no shares." Of course, we were somewhat surprised, but nothing more was said about the matter at the time.'

"Referring to Mr. Sloan's proposal Mr. Strong says that he communicated to Mrs. Strong the fact that he had received Mr. Sloan's

letter asking whether she wished to sell her shares; that after receiving Mr. Sloan's letter he replied, saying that he desired to
323 consult Mr. Jones, in whose possession the shares then were, and that within a week he spoke to Mr. Jones, telling him he had received a letter in which Mr. Sloan spoke of the purchase of the shares, and that Mr. Jones told him that he, Jones, would probably hear from Mr. Sloan on the subject. It is alleged in the complaint that the contract made by Mr. Jones should be set aside for two reasons—on account of the lack of express authority for the latter to sell, and on account of the deceit practised on the plaintiffs, because Mr. Gutierrez concealed from them the value of the shares, and deprived them of means for discovering their value. (Complaint, pars. 4 and 6).

From this it clearly appears that Mr. and Mrs. Strong were fully aware that Mr. Sloan desired to buy the shares. Mr. Strong himself had told Mr. Sloan to address himself to Mr. Jones, who had the shares in his possession. The very thing which was expected occurred. It was expected that Mr. Sloan and Mr. Jones would enter into negotiations concerning the purchase of the shares. This was *expressly* understood, and this was exactly what Jones and Sloan did, and they did it just as Strong and Jones had expected. After his conversation with Strong it would appear that the idea did not occur to Jones without suggestion 'that if he could get a good price it would be good business to sell them'; and 'that his reason for selling them was that these shares had been on hand for years, and that nothing had been done; that he had heard of negotiations and sales, but nothing had come of it, and his idea was to sell them for cash and use the money for the purchase of something which would bring an income'; * * * 'he knew that there was an agrarian and political question pending which directly affected the value of the lands of the Philippine Sugar Estates Development Co., and that the corporations holding them demanded a sum much greater than that which the Government had said it would
324 pay for these lands, and this was one of the reasons why he sold, because the demands of the owners of the lands were so extravagant that he thought that a long time would go by before anything definite would be done and that these shares would be unproductive for perhaps two, three or four years more.' All this came into his mind after he had been told the week before by Dr. Strong that Mr. Sloan would approach him concerning the purchase of the shares—information which was given by Mr. Strong to Mr. Jones after he had informed his wife, Mrs. Strong, of Mr. Sloan's purpose of buying the shares in Mr. Jones' possession. He continues, explaining his attitude by saying that 'he considered himself at that time absolutely free to sell these shares for Mrs. Strong upon what he considered to be the most advantageous terms possible; that he thought that he was empowered to sell these shares to Mr. Sloan because he acted for Mrs. Strong in her business affairs; that this lady had never given him authority for each individual transaction, acting as he did for her in *all* her business affairs as her agent; these shares were only part of her property and he considered himself to be empowered to sell any of her property.'

"When it is the principal himself who speaks to the agent concerning a contract which some third person is about to make with the latter; when it is the principal himself who refers this third person to the agent to deal with him, and the third person and the agent come to an understanding after negotiations which have continued for some weeks, these facts, examined in the light of a sound discretion, show that it cannot be successfully maintained that the principal had no knowledge of such contract. The principal might complain that the agent went beyond the scope of his authority, if such was the case; but that *express* authority was given for
325 the performance of the act cannot reasonably be denied by the principal. So great was the weight of the common consent which existed between principal and agent for the making of that contract that its influence is reflected in the complaint itself, and this accounts for paragraph VI, which implies *consent* on the part of the principals. If it were not so it could not be alleged with respect to this contract that it was vitiated by fraud or deceit on the part of the defendant, if the plaintiffs had not given a consent which could be affected by such fraud or deceit. Such is the force of truth.

"We may then conclude upon the evidence of these facts that there was an agreement between the principal and the agent for the sale of the shares upon the terms on which the sale was made. That is to say, that there was an express authority and that the consent given as stated was given knowingly, freely and spontaneously, and was absolutely perfect and sufficient to support the validity and efficacy of the contract; but that as frequently happens, especially in business transactions, the purchaser got the best of the bargain because the owners did not exercise the care necessary to find out what such shares were worth then or might be worth later. And this is the *deception* which, subsequent to the execution of the contract, nearly two months after, they discovered that they had suffered:—a deception which consists, as Mr. Jones stated to Mr. Sloan, in 'having made a bad bargain, as he had no idea that the Government was going to buy the lands so soon'; deception, in fine, which cannot, under the Civil Code, be considered as fraud, either principal or incidental.

"II. But abandoning the hypothetical discussion, and conforming strictly to the law, our view of the case may be expressed in the following terms:
326 "The Code of Commerce is preceded by an introduction which constitutes the most authoritative source of its interpretation. The first paragraph of this introduction refers to Sec. 1 of Title 3, Book 2, of the Code, and is as follows:

"'In dealing with the subject of agency, the drafters of the bill could not disregard the great increase which has occurred in our times in the volume of business conducted through agents, and which in turn has greatly influenced the manner in which mercantile agencies are carried out, and the transactions effected thereby. Thus it is that while at the time when the Code of 1829 was enacted mercantile agencies were only accepted by persons habitually engaged as commission agents, and solely concerned the purchase

and sale of merchandise, at the present time all merchants, without distinction, including the great business corporations, act as agents, extending their operations to placing large State, provincial and municipal loans, the negotiation of industrial or mercantile stocks and shares, and the purchase of the same for their own account.'

"Upon this basis Arts. 244, 245 and 246 of the new Code of Commerce of 1885 were drafted—the same Code which is now in force in the Philippines. These articles read as follows:

"'Art. 244. Whenever the purpose of an agency is to effect some act or operation of commerce, and the agent or the principal is a merchant or broker, the agency shall be regarded as mercantile.

"'Art. 245. The agent may transact the business entrusted to him by contracting in his *own* name or in that of his principal.

"'Art. 246. When the agent contracts in his *own* name he shall not be obliged to disclose his principal and shall be personally liable as though the business were his own, to the persons with whom he may have contracted, who shall have no action against the principal, nor the latter against the former, without prejudice to the principal's right of action against the agent, and *vice versa*.'

"Mr. Jones' agency, of which we have heard so much in this case, after the sale of the shares was consummated, is a *mercantile* agency because its purpose or object was an *operation of commerce* and the agent is a *merchant*. According to par. 2 of Art. 2 of the Code of Commerce, all matters which that Code deals with are declared to be acts of commerce. The rules of law which govern shares of stock transferable by delivery are to be found in the Code of Commerce, which places such shares with respect to their negotiation upon the same footing as Government paper, some mention of which
327 had been made in the former Code. The shares were issued by the Philippine Sugar Estates Development Co., which as appears from its Articles of Incorporation and by-laws introduced in evidence by the plaintiff, is a mercantile corporation. That Mr. Jones is a merchant is a fact which has been admitted by all concerned in the trial. He himself replied affirmatively to these two questions which were addressed to him: 'As a matter of fact, you are the head of the firm of Smith, Bell & Co. in these Islands?' 'Is not this one of the two most important firms in the Philippine Islands'? Consequently, he acted as a commercial agent in the sale of the shares. And he acted as a commercial agent who effected a sale in his own name, for in the course of negotiations he made no mention of the name of any other person, nor was he under obligation to do so. He acted as though the business were his own. Thus it is that neither Kauffman nor Gutierrez have a cause of action against the principals, Mr. and Mrs. Strong, nor Mr. and Mrs. Strong against Kauffman and Guiterrez. Consequently the complaint should have been dismissed as not stating facts constituting a cause of action, as is expressly provided by the law.

"Inasmuch as this was not done and the case went to final judgment, with this we close our dissenting opinion, and hold that the judgment appealed should be reversed *in toto*, the plaintiffs to pay the costs of the trial court.

"This conclusion of ours refers to the first finding of the judg-

ment appealed, based upon the first cause of action set forth in the amended complaint.

"In the original complaint, dated January 12, 1904, the plaintiffs merely asked that the Court declare that the stock in question was the property of Eleanor Erica Strong and order the same returned—a prayer in harmony with the revindicatory action
328 brought against a defendant between whom and the plaintiffs no privity existed by reason of the acquisition of these shares. But their attention having been drawn to the legal doctrine, established by an unbroken line of precedents, that 'where the action is based upon the nullity of an act or contract, the declaration of such nullity should be solicited either previously or simultaneously, and as a consequence thereof a recognition of the rights arising from such declaration of nullity,' on the 14th of April of the same year they amended their complaint by adding thereto 'or if the defendant acquired a title to the said shares by reason of the said transaction, then the plaintiffs are entitled to rescind and cancel the agreement by means of which this transaction was affected, and require the defendant to return the said shares of stock to the plaintiffs.' As against this allegation we hold that no right of action exists in favor of the plaintiffs to set aside the sale effected by F. Stewart Jones, the agent, in his own name, and that therefore the said sale subsists and is valid and effective, not having been attacked by the only persons who might attack it. It follows that no decision can be made concerning the revindicatory action, that is, the prayer for the return or delivery of the shares, which at the present time are held under valid title by a third person, to the lady who claims to be the owner thereof, until that title, in due form and by competent action, be declared void. We do not, therefore, consider it necessary to pass upon the revindicatory action, as it is not properly presented; but if it is before us, then, upon the legal grounds above expressed, we dismiss the action and, reversing the judgment appealed, discharge the defendant of the complaint, the costs of the trial court to be paid by the plaintiff.

(Signed) C. S. ARELLANO.
" VICTORINO MAPA."

329 And thereafter, to wit, on the 30th day of April, 1906, no motion for a rehearing in said cause having been filed under the rules of said Court, and before an order had been entered therein remitting said cause to said Court of First Instance, and before judgment had been entered in accordance with the decision last above quoted, the defendant presented a motion for a new trial on the ground of new and material evidence discovered by the defendant which could not have been discovered on the trial below by the exercise of due diligence, and which was of such a character as probably to change the result, which motion, together with the affidavits in support thereof, reads in words and figures as follows, to wit:

(Title and Heading.)

"Comes now the defendant and prays the Supreme Court that he be granted a new trial of this case, upon the grounds and facts set

forth in the affidavits of Eduardo Gutierrez Répide and William J. Rohde, annexed to this petition.

"This petition is based upon, and is filed in accordance with, the provisions of paragraph 2 of Art. 497 of the Code of Civil Procedure.

"Manila, April 30, 1906.

HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Defendant and Appellant."

Affidavit.

"(Title of Court and Cause.)

"CITY OF MANILA, *Philippine Islands, ss:*

"Eduardo Gutierrez Répide, having been duly sworn, deposes and says: That the deponent, at the time of the institution of the above entitled cause, was a member of the firm of Hartigan, Marple, Solignac & Gutierrez, and therefore one of the attorneys for the defendant, and that the latter on the day following the insti-
330 tution of this suit, delivered to the said firm of Hartigan, Marple, Solignac & Gutierrez various documents referring to the question at issue in this case; that Don Francisco Gutierrez Répide, in various conversations had with the deponent and the other members of the said firm of attorneys, a few days prior to the trial of this suit in the Court of First Instance, stated positively that he had delivered to his said attorneys, among other documents, a certain power of attorney granted by plaintiffs to Don Robert H. Wood and D. Francis Stuart Jones, the latter of whom had delivered said power to the defendant as evidence of his right to represent Mrs. Eleanor Erica Strong, a right which he, Jones, had been exercising generally in all dealings had with the Philippine Sugar Estates Development Co., Ltd.; that for a whole week immediately prior to the trial of this suit, the attorneys Charles H. Marple and William J. Rohde and the deponent made a search for said power in every part of the office of deponent and his said partners, making every possible effort to find all documents delivered to them by the defendant; that the deponent knows of his own knowledge that these documents were searched for in all the desks, and in all their drawers and pigeon-holes, and in every place in which the said attorneys hoped they might be found; that, in addition to this search instituted throughout every part of the office, the partners of the deponent, the deponent himself, and the defendant made every investigation in their power with a view to establishing whether or not the plaintiff had really granted to said F. Stuart Jones a sufficient power of attorney to sell in her name the shares in question in this case; that Don Francisco Gutierrez and his said attorneys continued their efforts to find the documents which the defendant in-
331 sisted he had delivered to his said attorneys up to the very day of the trial of this suit in first instance, and even during the course of said trial; that when the trial of this case was had in first instance the plaintiffs filed a power of attorney granted

by the plaintiff Eleanor Erica Strong to Jones, which said document empowered the latter exclusively to administer the property of said Eleanor Erica Strong; that upon the examination of the plaintiff, Eleanor Erica Strong and the said F. Stuart Jones as witnesses in this case, they were insistently and repeatedly asked by the attorneys for the defendant as to whether or not said plaintiff had ever granted to said Jones a more ample and comprehensive power of attorney than the one produced in evidence; that the plaintiff and Mr. Jones, under oath as witnesses, declared that Mrs. Eleanor Erica Strong had never issued any other power of attorney to Mr. Jones than the one filed in the record by the plaintiff, which is only a general power to administer property; that after the attorneys for Don Francisco Gutierrez had heard the plaintiff and her husband and the said Mr. Jones testify under oath, the associates of the deponent and he himself began to believe that the power which the defendant insisted he had delivered to them was a copy of the one filed in the record, inasmuch as Mrs. Eleanor Erica Strong, her husband, and Jones enjoyed a good reputation, and it was almost impossible to think that they would dare to openly prevaricate and give false evidence; that at all the times mentioned in this affidavit Don Francisco Gutierrez continued insisting that among the papers delivered by him to his attorneys was a power of attorney granted by plaintiff and empowering Mr. F. Stuart Jones to sell the shares in question in this case; that yesterday, April 29th, Mr. W. J. Rohde and the deponent read in the Cablenews that this suit had been decided by the Honorable Supreme Court of the Philippine Islands,
332 and that the sole question upon which the decision of the Court is based is the lack of any power or authorization on the part of Mr. Jones to sell the shares in question; that, after reading the said news, Mr. W. J. Rohde and the deponent determined to again make a search for the power to which the defendant had continually referred, and it then struck them that it was very possible that the said power to which the defendant alluded might have been placed unwittingly in a book. As a result of this idea, Mr. W. J. Rohde and the deponent, on the morning of this same day, began to search through all the books in the library of their office, numbering approximately some two thousand volumes, and, sure enough, in the afternoon they found, in a volume of the American & English Encyclopedia of Law containing the subject "Contempt" a copy of a most ample power of attorney to sell granted by plaintiff Jones and distinct from the power filed in the record as the only one which had ever been granted, and same is annexed to this affidavit.

"Deponent further states that on the morning of the 30th day of April, 1906, he compared the copy hereto annexed of the said power with its original filed in the archives of the Insular Government, and the same is a faithful and most exact copy.

"Deponent further states that the explanation of the finding of this power in the aforesaid place is to be found in one of the brusque detentions practised by Judge Sweeney on the person of Don Francisco Gutierrez in the contempt proceedings taken against

said Gutierrez in the course of this case, and in the fact that said power was left by an oversight in the volume consulted with reference to the contempt of which the defendant in this suit was accused.

(Signed) EDUARDO GUTIERREZ.

"Subscribed and sworn to before me this 30th day of April, 1906, deponent exhibiting to me his personal cedula No. 1330599, issued in the City of Manila the 29th day of January, 1906.

(Signed) FERMIN MERIAN,
Notary Public."

Commission expires Dec. 31, 1906."

333 *Affidavit.*

"(Title and Heading.)

"CITY OF MANILA, *Philippine Islands, ss:*

"W. J. Rohde, having been duly sworn, states: That a few days prior to the trial of this suit in the Court of First Instance, the defendant, Don Francisco Gutierrez Répide, stated positively that he had delivered to his attorneys, Hartigan, Marple, Solignac & Gutierrez, among other documents, a certain power of attorney granted by plaintiffs to Don Robert H. Wood and D. Francis Stuart Jones, the latter of whom had delivered said power to the defendant as evidence of his right to represent Mrs. Eleanor Erica Strong, a right which he, Jones, had been exercising generally in all dealings had with the Philippine Sugar Estates Development Co., Ltd.; that for a whole week immediately prior to the trial of this suit, the attorneys Charles H. Marple, Eduardo Gutierrez Répide and the defendant made a search for said power in every part of the office of deponent and his said partners, making every possible effort to find all documents delivered to them by the defendant; that the deponent knows of his own knowledge that these documents were searched for in all the desks, and in all their drawers and pigeon-holes, and in every place in which the said attorneys hoped they might be found; that, in addition to this search instituted throughout every part of the office, the partners of the deponent, the deponent himself and the defendant made every investigation in their power with a view to establishing whether or not the plaintiff had really granted to said F. Stuart Jones a sufficient power of attorney to sell in her name the shares in question in this case; that Don Francisco Gutierrez and his said attorneys continued their efforts to find the documents which the defendant insisted he had delivered to
334 his said attorneys up to the very day of the trial of this suit in First Instance, and even during the course of said trial; that when the trial of this case was had in First Instance the plaintiffs filed a power of attorney granted by the plaintiff Eleanor Erica Strong to Jones, which said document empowered the latter exclusively to administer the property of said Eleanor Erica Strong; that, upon the examination of the plaintiff Eleanor Erica Strong

and the said F. Stuart Jones as witnesses in this case, they were insistently and repeatedly asked by the attorneys for the defendant as to whether or not said plaintiff had ever granted to said Jones a more ample and comprehensive power of attorney than the one produced in evidence; that the plaintiff and Mr. Jones under oath as witnesses declared that Mrs. Eleanor Erica Strong had never issued any other power of attorney to Mr. Jones than the one filed in the record by the plaintiff, which is only a general power to administer property; that after the attorneys for Don Francisco Gutierrez had heard the plaintiff and her husband and the said Mr. Jones testify under oath, the associates of the deponent and he himself began to believe that the power which the defendant insisted he had delivered to them was a copy of the one filed in the record, inasmuch as Mrs. Eleanor Erica Strong, her husband, and Jones enjoyed a good reputation, and it was almost impossible to think that they would dare to openly prevaricate and give false evidence; that at all the times mentioned in this affidavit Don Francisco Gutierrez continued insisting that among the papers delivered by him to his attorneys was a power of attorney granted by plaintiff and empowering Mr. F. Stuart Jones to sell the shares in question in this case; that yesterday, April 29th, Don Eduardo Gutierrez and the deponent
335 read in the Cablenews that this suit had been decided by the Honorable Supreme Court of the Philippine Islands, and that the sole question upon which the decision of the Court — based is the lack of any power or authorization on the part of Mr. Jones to sell the shares in question; that, after reading the said news, Don Eduardo Gutierrez and the deponent determined to again make a search for the power to which the defendant had continually referred, and it then struck them that it was very possible that the said power to which the defendant alluded might have been placed unwittingly in a book. As a result of this idea, Don Eduardo Gutierrez and the deponent, on the morning of this same day, began to search through all the books in the library of their office, numbering approximately some two thousand volumes, and, sure enough, in the afternoon they found, in a volume of the American & English Encyclopedia of Law containing the subject 'contempt,' a copy of a most ample power of attorney to sell granted by plaintiff to Jones and distinct from the power filed in the record as the only one which had ever been granted, and same is annexed to this affidavit.

(Signed) WM. J. ROHDE.

"Subscribed and sworn to before me this 30th day of April, 1906, the deponent exhibiting to be his cedula No. A1399163, issued on the 27th of February, 1906.

(Signed) FERMIN MERIAN,
Notary Public."

Commission expires Dec. 31, 1906."

336 And said plaintiffs, by counsel, did then and there insist before the Court that said motion should not be considered, because after the final determination of the cause, and after the hearing of the Bill of Exceptions, the motion was too late, and prayed

the Court to disregard said motion; but the Court, disregarding the objection of the plaintiffs, set said motion for hearing on the 9th day of August, 1906.

And thereafter, to wit, on the 9th day of August, 1906, said motion came on to be heard before the Court, together with the affidavits in support thereof, and the Court ruled upon said motion as follows, to wit:

(Title and Heading.)

"TRACEY, *J.*:

"The defendant having petitioned for a new trial on the ground of new and material evidence discovered by him, which could not have been discovered on the trial below by the exercise of due diligence and which is of such a character as probably to change the result, and having attached to his petition affidavits showing the facts entitling him to a new trial and such newly discovered evidence, consisting of the copy of a power of attorney from the plaintiffs to F. Stuart Jones and Robert S. Wood, jointly and severally, bearing date on July 1, 1901, and such evidence appearing to be necessary to a just and final disposition of this cause, we are of the opinion that, notwithstanding grave doubt on the controverted facts before us, as to the diligence of the plaintiff in the matter, the ends of justice require that the offered evidence be received, together with such other evidence in relation thereto upon the part of either party as may relate thereto, to be considered hereafter together with the evidence on the trial below.

337 "Therefore it is ordered that when properly authenticated such testimony may be received, together with such further evidence by either party bearing upon the issue of the authority delegated by the plaintiffs, or either of them, to F. Stuart Jones as shall be material; all such evidence to be taken before a commissioner to be agreed upon by the parties, within ten days, or in default of such agreement to be appointed by this court; at a time and place to be fixed by the commissioner, the evidence taken before him to be turned to this Court on or before the first day of October, 1906.

(Signed.) JAMES F. TRACEY.

"We concur:

(Signed) C. S. ARELLANO, *C. J.*
" FLORENTINO TORRES.
" VICTORINO MAPA.
" CHARLES A. WILLARD.

Mr. Justice Carson did not vote."

And upon the hearing of said motion the plaintiffs, by counsel, insisted that the affidavits in support thereof were insufficient, inasmuch as they failed to show that the evidence was newly discovered, it affirmatively appearing that the power of attorney in question prior to, and the commencement of, the trial in the Court of First Instance, and at all times during said trial and thereafter, until after the decision of said cause in the Supreme Court, had been and

was in the possession of the defendant, and that at the time of said trial in the Court of First Instance said power of attorney was in the possession of defendant's counsel, and both said defendant and his counsel had full knowledge of the contents of said power of attorney and could have testified to the contents thereof; and moreover, it
338 appears by said affidavits, and by the copy of the power of attorney thereto attached, that said power of attorney was recorded in the Bureau of Archives of the Philippine Islands, and could have been produced by said defendant if he had elected to do so; and the Court granted said motion, in the manner and form above set forth, over the objection of said plaintiffs, to which order granting said motion plaintiffs then and there excepted.

And thereafter, to wit, on the 20th day of October, 1906, said cause again came on to be heard on the power of attorney, together with the evidence on the trial below, no further or other evidence than the power of attorney having been offered by or received on behalf of either of the parties hereto, the said parties hereto, by their respective counsel, stipulating as follows, to wit:

(Title of Court and Cause.)

"Now comes the parties in the above entitled cause and respectfully represent to the Honorable Supreme Court that the document marked 'Exhibit A', attached to this document, is a copy of the power of attorney referred to by the affidavits of William J. Rohde and Eduardo Gutierrez, filed in this case before this Honorable Court.

"And the Commissioner up to this date not having set a day for the taking of the evidence in accordance with the decision of this Court dated August 9th, the parties pray that the Court receive and consider directly the exhibit attached (the same being the power of attorney hereinbefore referred to) without the necessity of first presenting it to the Commissioner, and without the necessity of taking any more evidence, and that the appointment of said Commissioner be considered at an end.

339 "The party appellee objects to the admission of said Exhibit 'A', because the same is irrelevant and immaterial.

"Manila, October 20, 1906.

(Signed) KINNEY, ODLIN & LAWRENCE,
Attorneys for Appellees.

(Signed) HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Appellant.

Which power of attorney reads in words and figures as follows, to wit:

"MANILA, *July* 1, 1901.

"Before me, Don Enrique Barrera y Caldes, Professor of Civil and Canonical Law, Notary Public, and resident of Manila, appeared Mrs. Eleanor Erica Strong, engaged in the occupations proper to her sex, accompanied by her husband, Mr. Richard Pearson Strong, Medical Doctor of the Army of the United States, both of legal age and residents of this city, without personal cedulas, they being exempt from the payment of such tax.

"And they possessing, in my judgment, the necessary legal capacity to execute this document, nothing to the contrary to me appearing, the said Mrs. Eleanor Erica Strong, with the consent of her husband first asked, granted and accepted, as I hereby certify, freely and voluntary declared the following: That she hereby grants to Messrs. Robert H. Wood and Francis Stuart Jones, both merchants, of legal age, and residents of this city, such ample and sufficient powers as may be requisite and necessary to enable them, in the name of and as representing the grantor and in the exercise of the rights and actions of the latter, or either of them, jointly or severally, to execute and perform the following acts:

"To administer, manage and control all the property and
340 revenues of the grantor, of whatsoever nature and character they may be, collecting and taking over the rents, fruits and products of the same: selling them for the prices and under the conditions which they may deem proper; collecting the amount realized from a sale of the same either in one payment or by instalments; executing all such public and private documents as may be necessary; mortgaging and otherwise encumbering said property under such conditions as they may see fit; endeavoring to bring about a transfer, either in the name of the grantor or in that of her said attorneys in fact, of the shares now standing in the name of the late Don Richard H. Andrews, to which end they may do and perform all acts that may be necessary; effecting the transfer of the shares of the companies known as the Manila Trading Company and The Oriente Hotel and that of the right possessed by her deceased husband, Mr. Richard H. Andrews, to a certain sum of money known under the name of the 'Settlement', which the grantor has hitherto bound herself to transfer to Mr. Henry J. Andrews by deed executed before the present notary on March 12th of this present year, to which end they will authorize all such transfers as may be necessary to execute and complete the transfer of the aforesaid shares; collecting and receiving all and any sums of money which the grantor may be entitled to receive from any person, corporation, or firm by virtue of any titles, shares or rights whatsoever; giving all proper receipts, acquittances, and other documents, and doing and performing all acts and things which the grantor might — or perform if personally present.

"And, therefore, for all of the aforesaid purposes, and for everything incidental thereto, she hereby confers upon the said Messrs.
Wood and Jones the fullest and most effective powers which
341 may be necessary in the premises, freely and without any limitation whatsoever; hereby ratifying and confirming, in the most solemn manner known to the law, everything which her said attorneys do by virtue of these presents.

"Thus declared and executed in presence of the subscribing witnesses, Don Candido del Rosario and Don Tomás Pilar y Pimentel, both clerks, of legal age, and residents of this city; and this instrument having been read by me, the Notary, all parties present having waived their right to read it for themselves, the grantor

hereby ratifies the same and all the parties sign. All of which I certify.

ELEANOR ERICA STRONG.
RICHARD P. STRONG.
CANDO. ROSARIO.
TOMÁS PILAR.
(Signed) DR. ENRIQUE BARRERA Y CALDES.

[NOTARIAL SEAL.]"

And plaintiffs, by counsel, claimed that said power of attorney does not expressly authorize the agent of the plaintiff to sell the shares in controversy, and therefore is incompetent and immaterial and does not tend to prove any issue in said cause.

And thereafter, to wit, on the 16th day of November, 1906, the Court rendered its decision, setting aside its former decision and reversing the judgment of the Court of First Instance, and condemning the plaintiffs to pay the costs of the Court of First Instance but not the costs of the Supreme Court, which last rendered decision reads in words and figures as follows, to wit:

(The decision of the Court, together with the dissenting opinion of Mr. Justice Johnson, is here inserted in full at the suggestion of Mr. Justice Tracey.)

342 (Title and Heading.)

"TRACEY, *J.*:

"A motion by the defendant for a new trial of this action under sub-section 2 of Article 497 of the Code of Civil Procedure having been granted to the extent of allowing the submission of new evidence as to the nature of the authority delegated by the plaintiff to her agent, Jones, we have now to consider the effect of the additional proof.

"Neither party took advantage of the provision of our order allowing oral testimony and the new proof before us consists solely of a second power of attorney, bearing date July 1st, 1901, from the plaintiff, Eleanor Erica Strong, to Robert J. Wood and Francisco Stuart Jones.

"From the two opinions heretofore rendered in this case, it is apparent that the division of the court arose upon the point of an express agency from the plaintiff to sell the stock which was transferred to the defendant by Jones. Notwithstanding the many indications of such power, so clearly pointed out in the opinion of the learned Chief Justice, the majority of the Court did not feel at liberty, on the proofs then before us as a whole, to infer its existence and its character as an express authority to sell, complying with Article 1713 of the Civil Code. In the majority opinion it was said:

"'The difficulty with this branch of the case is the scantiness of the evidence; the documents have been destroyed, the declarations of the parties are brief and it would be impossible to imply an express power from them without assuming facts of which no sufficient evidence exists.'

343 "The instrument now received in evidence contains the following clause:

" 'The she hereby confers upon Messrs. Roberto H. Wood and Francisco Stuart Jones, both of whom are of legal age and resident merchants of this city, ample and sufficient power, and such as may be requisite or necessary to execute in her behalf, either jointly or separately, any of the following acts:

" 'To administer, manage and control all the property and revenues of the grantor of whatever nature and condition, collecting and holding the revenues, fruits and products thereof; disposing of the same at such prices and under such terms as they may deem most convenient; receiving the proceeds of the sale thereof at the time of such sale or in instalments, executing such public and private instruments as may be necessary; hypothecating or incumbering said property under such terms and conditions as they may deem advisable; securing the transfer, either to the grantor or to her said attorneys-in-fact for her benefit, of all shares which may be in the name of Ricardo H. Andrews, deceased, and to this end to do all that may be necessary for the transference of all such shares in the association known as The Manila Trading Company and the Oriente Hotel, and also the interest which her said deceased husband, Ricardo H. Andrews, has in a certain fund known as the 'Settlement', which the grantor has heretofore agreed to transfer to Enrique J. Andrews by virtue of an instrument executed before the undersigned notary on March 12th of the present year, and to this end they shall execute such transfers as may be necessary to effect the conveyance of
344 the said shares, demanding and receiving whatever sums may be due her from any person, corporation or association whatsoever, by virtue of any title or right, executing such receipts and acknowledgments of payment or other documents as may be necessary and to exercise such other acts as the grantor herself would exercise if she intervened directly and personally.'

"We entertain no doubt of the fair meaning of this language. It empowers either Jones or Wood to sell the general stocks of the plaintiff. A construction that would restrict the words 'disposing of the same' to the revenues, fruits and products, rather than the property itself is inconsistent with the nature of such revenues with the right of hypothecation of property expressly granted and with the general scope of the power, as well as with its interpretation by the subsequent acts of the parties.

"It was clearly under this authority that the proceeds of the sale of other stocks made by either one of these attorneys were deposited and reinvested in their joint names and we think they were justified in the construction of this instrument that induced them to adopt this course of business. It is also clear that the direction of the plaintiff to Jones, in the conversation on the Luneta, not to part with this stock until he got its face value, related to his action under this particular instrument and amounted to an express recognition of its character as a pre-existing grant of a power of sale.

"Nor can we sustain the contention of the plaintiff that the maxim *expressio unius est exclusio alterius* is applicable to the shares affected

by this power. The two stocks pecified in the language heretofore quoted, those of The Manila Trading Company and the
345 Oriente Hotel Company, differed from other investments in this respect, that they stood in the name of the plaintiff's deceased husband and, unlike the shares that are the subject of this action, were not payable to bearer. This peculiar condition called for a special direction for their transfer, while all other stocks fell naturally under the general terms of the power.

"This document is also important as a test of the accuracy and credibility of several of the witnesses and of their good faith in endeavoring to explain away upon other hypotheses the facts that grew naturally out of its existence and its terms.

"According to the theory of both opinions, this newly discovered evidence is absolutely decisive of the issues in this case. The order for judgment heretofore made by this court is set aside and the judgment of the lower court is reversed, the defendant is absolved and the action is dismissed upon its merits, with costs against the plaintiff in the Court of First Instance but without costs in this Court.

"It is so ordered.

(Signed) JAMES F. TRACEY.

"We concur:

(Signed) C. S. ARELLANO.
" FLORENTINO TORRES.
" VICTORINO MAPA.
" CHARLES A. WILLARD.

Justice Carson did not take part."

346 ("Case No. 2101, November 15, 1906.)

"Dissenting Opinion.

"JOHNSON, *J.*:

"I cannot give my consent to the doctrine contained in the decision of the majority of the Court. In the first decision in this case I prepared a concurring opinion, but for some reason it was lost and does not appear as a part of said decision. The first opinion prepared by the Court discussed two questions:

"First. That her agent had no power to sell or deliver her stock in the Philippines Estates Development Company Limited; and

"Second. That its sale through her agent was procured by fraud on the part of the defendant.

"My concurring decision in the first instance was based upon the second ground, a ground repudiated by the majority opinion.

"The evidence adduced during the trial of said cause in the Court below justifies the following finding of facts:

"1st. That the plaintiff Eleanor Erica Strong, is a married woman and the plaintiff, Richard P. Strong, is her husband.

"2nd. That on and before the 10th day of October, 1903 the plaintiff, Eleanor Erica Strong, was the owner of eight hundred (800) shares of capital stock in the Philippines Sugar Estate Development Company, Limited.

"3rd. That the defendant, Francisco Gutierrez Répide, was the General Manager of the said Company.

347 4th. That the par value of the said shares was one hundred (100) dollars Mexican currency.

"5th. That on the said 10th day of October, 1903, one F. Stuart Jones had in his possession the said eight hundred (800) shares of stock and on the said day transferred the same to the defendant in the consideration of 16,000 dollars, Mexican currency, without the knowledge of the plaintiff.

"6th. That on the said 10th day of October the defendant well knew that the shares were the property of the plaintiff.

"7th. That the said plaintiff, Eleanor Erica Strong, had not on the said 10th day of October, neither has she since said day, confirmed or ratified said sale, but upon the contrary, as soon as she became aware of the sale of said stock, she immediately repudiated said sale upon the ground among other things that her alleged agent, Jones, had no authority to sell said stock and instituted an action in the Court of First Instance for the purpose of having said sale set aside and at the same time prayed for an injunction against the defendant to prevent him from disposing of said shares until further order of the court.

"8th. That there had been issued 42,030 shares of the Philippines Sugar Estates Development Company, of which the defendant Gutierrez, owned 30,040.

"9th. That Mr. Gutierrez was a director and the administrator of the said Philippines Sugar Estates Development Company.

"10th. That during the months of July, August, September and October, 1903, the defendant was negotiating with Governor

348 Taft, as the representative of the Philippine Government, for the sale of the lands known as the "Dominican Lands," which represented the lands of the Philippines Sugar Estates Development Company.

"11th. That on the 5th day of July, 1903, Governor Taft, as said representative, offered to the defendant for said lands the sum of $2,736,899.57 gold, the equivalent of value of which in Mexican currency at that time was $6,842,248.92 *dollars*. (See Executive Order No. 17 of May 1st, 1903, for the value of Mexican currency in the Philippine Islands July 5th, 1903.)

"12th. That the par value of the 42,030 shares which had been issued by the Philippines Sugar Estates Development Company was 4,203,000.00 dollars Mexican currency.

"13th. That of the said 42,030 shares, the defendant Gutierrez and Eleanor Erica Strong owned 3,840.

"14th. That the above offer for the purchase of the lands of said company *remained open for acceptance by the defendant until some time before the end of October of the year 1903, when* Governor Taft, as said representative, offered to the defendant as administrator of said estate, a sum equal to about 25% of an increase over and above the said offer of July 5th.

"15th. That af*e*r some negotiations between the defendant and other Catholic Church organizations which were attempting to dis-

pose of their lands to the Government and after the defendant had made certain reservations of the lands of the company which he represented from the offer which he first made, and after securing from the other said organizations which were desiring to sell their lands the sum of $335,000.00, he sold to Governor Taft, as said representative, the lands which remained of the said Philippine Sugar Estates Development Company for the sum of $3,671,657.00 gold,
349 adding to which the sum of $335,000.00 which he received from the other church organizations, the sum would be $4,006,657, gold, which the defendant received for his Company, the equivalent value of which in Mexican currency was 9,535,843.66 dollars. (See Executive Order No. 55, July 18th, 1903.)

"16th. The value of the 42,030 shares of said stock under the offer of Governor Taft made on the 5th day of July, was $2,736,-899.57 gold, or 6,842,248.92 dollars Mexican currency. Under this offer one share of the stock was worth $65.00 plus, gold, or 162 dollars, plus, Mexican currency. This offer which the defendant might have accepted at any time up until after the time he purchased the said stock of the plaintiff, made the eight hundred (800) shares of the plaintiff worth the sum of 129,664 dollars, Mexican currency, for which he paid the plaintiff the sum of 16,000 dollars Mexican currency, making a profit to the defendant, had he accepted the offer of Governor Taft, which he had authority to do, of 113,664 dollars, Mexican currency.

"17th. That the value of the stock based upon the cash actually received by the defendant from the Government, without reference to the land which the said company retained, would be 226.88 Mexican currency, making the 800 shares of the plaintiff worth 181,504 dollars Mexican currency or 165,504 dollars Mexican currency more than the defendant had paid to the plaintiff for her said shares.

"18th. That the office of the defendant, Gutierrez, was in the same building and next door to the office of Mr. Jones and that, notwithstanding this fact, the defendant employed one Kauffman, whose place of business was some distance from the office of both the defendant and Jones, to buy the said stock of the said plaintiff
350 through still another third person called Sloane, and paid to the said Kauffman the sum of $1,800.00 for his services.

"19th. That Mr. Kauffman, as agent of the defendant for the purchase of said stock, in order to keep secret the identity of the real purchaser, represented to the said Sloane that he, Kauffman, desired to purchase the said stock for a member of his wife's family.

"20th. That the defendant, in order to further keep secret the fact that he was purchasing the stock, paid for said stock by a check not in his own name but in the name of Rueda Hermanos.

"21st. That the evidence does not disclose that the plaintiff, Eleanor Erica Strong, had any knowledge whatever of the negotiations which the defendant was carrying on for the sale of the property of said company.

"22nd. That while the defendant had negotiated for many months for the sale of all the property of the said association, he failed absolutely to call the attention of the plaintiff, who was a large stockholder in the said company, to the said fact.

"23rd. That the defendant was its manager and director and conducted the transactions for the sale of the property of said corporation, without any formal authorization by the said corporation.

"24th. That the defendant was also in person the holder of a large majority of the stock, thus not only controlling the process of the treaty with the Government in all its stages, but also its ultimate result by his own vote in the shareholders' meeting.

"From the foregoing facts adduced from the evidence given in the court below, the conclusion of facts by the lower court,
351 to wit: That the defendant, while acting as General Manager of the Philippines Sugar Estates Development Company, holding and owning nearly three-fourths of all the stock of said company, carried on negotiations, without the knowledge of the stockholders of the Board of Directors of said Company, for the sale of all of the property of said Company, and while having it within his power, by simply consenting to terms already offered, to sell such property at a price which would more than double the stock of said company, did secretly and clandestinely purchase said stock of the plaintiff at a very low price, not equaling 1/10 of the value of the stock, based upon the price which he had already been offered, without acquainting her with all or any of such facts, and thereby violating the fiduciary relation which existed betwe-n him, as General Manager and one of the principal directors, and the plaintiff who was one of the large stockholders of such company.

"When the stockholders of a corporation elect a Board of Directors for the purpose of managing the business affairs of said corporation and such stockholders accept this responsibility, they thereby become the agents and stand in a fiduciary relation with the stockholders in the management of such corporation and will not be permitted thereafter during the continuance of such relation, to deal with the property of said corporation in a way which will result to their individual benefit as against the rights and interests of said stockholders. If they do, such special advantage will result to the advantage of the particular stockholders injured. This however, does not mean that a director may not openly and above-board deal in the stock of the corporation, buy and sell the same at his pleasure. It simply means that when the General Manager of a corporation or a director of the same has it within his peculiar power to
352 grant enhance the value of the stock of the corporation, that he can not secretly buy the stock of the stockholders of said corporation at a shockingly reduced price without giving them full information concerning the present and prospective value of said stock. If any other rule is permitted a General Manager of a corporation might ruin the value of the stock of the stockholders of said corporation while they thus were becoming immensely wealthy while acting in a fiduciary relation with such stockholders.

"I maintain that whatever financial gain the General Manager, the Board of Directors or any member of the same may secure in this way, shall result to the benefit of the stockholders or to any one of them so injured.

"This theory was entirely repudiated on the part of the majority in the first opinion written in this cause.

"I maintain that the General Manager, directors or trustees, by whatever name called, of a corporation, are the agents selected by the stockholders or members, to manage the ordinary affairs of the corporation in the exercise of their best discretion, subject to the charter of said corporation and the by-laws, rules or regulations prescribed by the stockholders; that they occupy a fiduciary relation towards the stockholders and should be treated by the courts as trustees for them. (Thompson's Commentaries on the Law of Corporations, Section 4009.)

"Chancellor Valworth, very early in the history of the jurisprudence of the State of New York, in the case of Robinson *vs.* Smith (3 Page (N. Y.) 222), (24 American Decisions, 212) said:

"Directors are trustees or managing partners and the stockholders are *cestius que trust* and have a joint interest in all the property and effects of the corporation, and no injury to the stockholders,
353 sustained by a fundamental breach of this trust can, upon the general principles of equity, will be suffered to pass without a remedy.

"The General Manager or the directors of a corporation will not be allowed to deal with the corporate funds or property for their private gain. They have no right to deal for themselves and for the corporation at the same time. If they do they must account for the profits made by the use of the company's assets and for the money made by a breach of trust.'

"Ward *vs.* Davidson, 89 Mo., 445 and 458.

"Wardell *vs.* Railroad Company, 103 U. S., 651.

"In this latter case, after the statement of facts which showed clearly the intention of certain directors to enter into negotiations which should result to their individual profit as against the interests of the corporation, Mr. Justice Field in deciding the case said:

" 'It hardly requires argument to show that a scheme thus designed to enable the director who authorized the contract to divide with the directors large sums which should have been saved to the company, was utterly indefensible and illegal. Those directors, constituting the executive committee of the board, were clothed with power to manage the affairs of the company, for the benefit of its stockholders and creditors. *Their character as agents forbade the exercise of their powers for their own personal ends against the interest of the company.* They were thereby precluded from deriving any advantage from contracts, made by their authority as directors, except through the company for which they acted. Their position was one of great trust, and to engage in any matter for their personal advantage inconsistent with it was to violate their duty and to commit a fraud upon the company.

354 "It is one of the fundamental principles of law that a person acting as an agent or in a fiduciary relation can not act for himself and at the same time as agent for another whose interests are conflicting. Thus a persons can not be a purchaser of property and at the same time agent of the vendor. The law will always

condemn the transactions of such a party in his own behalf or in respect to matters concerning him as agent of others and will give relief against such acts whenever their enforcement is seasonably resisted. Directors and general managers of corporations and all other persons who sustain any fiduciary relation to other parties and are clothed with power to act for them are subject to this rule.

"Great Luxembourg Railway Company *vs.* Magnay, 25 Beav. 586.

"In the cases of Flint & Pierre Marquette Railway Company *vs.* Dewey (14 Mich. 477) it appeared that the secretary and a director of the plaintiff company entered into a contract on behalf of said company by virtue of which they were to receive financial profit. A suit was brought to compel the said director and secretary to turn over to the stockholders the fruits of said contract and in deciding the case the Supreme Court said:

"It is possible there may have been no actual fraud and that the contract could not have been let on better terms, but the principle of law applicable to such contract renders it immaterial, under the circumstances in this case, whether there has been any fraud in fact, or any injury to the company. Fidelity in the agent is what is aimed at, and as a means of securing it, the law will not permit the agent to place himself in a situation in which he may be tempted by his own private interest to disregard that of his
355 principal, and if such contracts were held valid until shown to be fraudulent and corrupt, the result, as a general rule, would be that they must be enforced in spite of fraud and corruption. From the evidence in the case we think all of the eleven bonds (so acquired by the defendants) in question were, as between the corporation and the defendant, the property of the corporation.'

"People *vs.* Township Board, etc., 11 Mich., 225.

"In the present case the defendant Gutierrez, in all of his negotiations with Governor Taft in his effort to sell the property of the Philippines Sugar Estates Development Company, acted as the representative of said corporation and the said stockholders, without consulting them, knowing full well that after he had reached a satisfactory result with Governor Taft that he could dispose of the said property by reason of the fact that he held in his own hands a majority of the votes and could make such disposition as he saw fit without reference to their wishes and against their express desires. At the time of the purchase of the shares of the plaintiff, the defendant well knew that the said stocks had a value far in excess of that which he paid. He thereby, by his own acts, made it possible for him to receive a large sum of money for his own benefit to the detriment of the plaintiff. A director or a general manager of a corporation can not make profits out of his principal, for whom he has undertaken to act, in the business of his agency. If he does make a profit while acting as such agent or in such fiduciary relation, the principal may apply to the courts and have such profit declared to be his.

"Simons *vs.* Vulcan Oil and Mining Co., 61 Penn., State, 202.

"100 American Decisions, 628.

"In this latter case Thompson, Chief Justice, said:

"'Directors (of a corporation) are but the agents and
356 trustees of the company; they have power only to act for the interest of the company and not against it.'

"In the case of Bliss *vs.* Matteson (45 N. Y. 22) the Supreme Court of New York said:

"'The directors of a corporation are the trustees of the stockholders, etc.' 'Any agreement to influence their action for the benefit of others and to the prejudice of the company is fraudulent and void.'

"The question of the liability of the directors of a corporation to the stockholders was squarely presented to the Supreme Court of New York in the case of Rothmiller *vs.* Stein, (143 N. Y. 581). In that case the plaintiff held a large number of stocks in the corporation of which the defendant was the president. Certain persons offered to buy some of the stocks held by the plaintiff, offering to pay for them $80.00 in cash per share or $50.00 in case per share and $50.00 additional upon a day subsequent, providing a dividend of 10% should be declared on or before such subsequent day. The plaintiff, before accepting such offer, made inquiry of the defendant concerning the status of the business of the corporation and received from the defendant the information that the business of said corporation was prospering and had increased enormously and that much larger dividends than 10% would be declared at the annual meeting. Upon this information received from the defendant, the president of the company, he accepted the second offer, to wit $50.00 in cash and $50.00 more per share to be paid at a subsequent day if the annual dividends amounted to 10%.

"At the time the defendant made these representations to the plaintiff the fact was that the company was largely in debt
357 and actually insolvent, and consequently the dividend of 10% upon which the plaintiff was to receive the additional $50.00 per share for his stock, was never declared and as a consequence of which the plaintiff lost the $50.00 per share which he would have received had the representations of the defendant been true. The plaintiff brought action against the defendant, the said president, to recover from him the *fifference* between what he actually received for his stock and the amount which he would have received had the statements of the defendant been true. To the complaint of the plaintiff the defendant filed a general demurrer. In passing upon the demurrer Mr. Justice Peckham, now of the Supreme Court of the United States, said:

"'We are therefore of the opinion that the complaint contains allegations sufficient to show the commission of actual fraud,' and overruled the demurrer of the defendant.

"In the majority opinion in the present case it is said that Justice Peckham stated in the case of Rothmiller *vs.* Stein that the rule of '*Caveat emptor*' applied to the duty of a director of a corporation. A careful reading of the case fails to disclose any statement of that kind. Justice Peckham, however, does discuss the effect of the rule of '*caveat emptor*' in the purchase and sale of stocks as well as of

other rights and obligations, but nowhere in the decision does he apply the doctrine to the case then presented to the court.

"In the case of Oliver *vs.* Oliver, *et al.*, (45 S. E. Reporter, 232), decided by the Supreme Court of Georgia on the 11th day of August, 1903, a case very similar to the one which has been presented to this court was decided. In that case the defendant was president and director of the Gates City Oil Company. He
358 obtained an option upon the stock held by the plaintiff at $110.00 per share. This option was renewed from time to time. The option was procured in pursuance of a contemplated sale of the Oil Company's plant for $304,500.00, the company retaining other assets above the liability which made the stock actually worth $185.00 per share. The defendant failed to disclose to the plaintiff this contemplated sale of the company's plant. Immediately after the defendant had secured from the plaintiff 658 shares of the said stock, he sold the company's plant, realizing a profit upon the shares purchased from the plaintiff equaling $49,250.00 The plaintiff instituted an action against the defendant for the purpose of recovering this amount. The defendant demurred to the petition of the plaintiff. The demurrer was overruled. Justice Lamar, in discussing the rights of the plaintiff and the relation which a director of a corporation bears to the stockholders, said:

" 'This brings us to a consideration of the relation which a director bears to an individual stockholder. All the authorities agree that he is a trustee for the company and in his capacity as such he serves the interest of the entire body of stockholders, as well as those of the individual shareholder, who usually can not sue in his own name for the wrongs done the company by an officer; but the fact that he is a trustee for all is not to be perverted into holding that he is under no obligation to each. The fact that he must serve the company does not warrant him in becoming an active and successful opponent of an individual stockholder with reference to the latter's undivided interest in the other property committed to the director's care. That he is primarily trustee for the corporation is not intended to make the artificial entity a fetich to be worshiped in the sacrifice of those who in the last analysis are the real
359 parties at interest. No process of reasoning and no amount of argument can destroy the fact that the director is, in the most important and legitimate sense, trustee for the stockholder,' citing Jackson *vs.* Ludeling, 21 Wallace, (U. S.) 616.

"The same Judge continuing discusses the duty of a director to disclose to the shareholders all information concerning the condition of the corporation and adds the following statement:

" 'If, however, the fact within the knowledge of the director is of a character calculated to affect the selling price and can, without detriment to the interests of the company, be imparted to the shareholder, the director, before he buys, is bound to make a full disclosure.

" 'In a certain sense the information is *quasi* asset of the company and the shareholder is as much entitled to the advantage of that sort of an asset as to any other regularly entered upon the list of the company's holdings. If the officer should purposely conceal from the stockholder information as to the existence of valuable

property belonging to the company and take advantage of this concealment, the sale would necessarily be set aside.'

"Mr. Pomeroy, in his valuable work on Equity Jurisprudence (2nd Edition, Section 1090) says:

"'Directors are not only trustees of the corporation but also *quasi* or *sub modo* trustees of the stockholders, with respect to their shares of stock.' If, then, any sort of trustees, they are necessarily subject to the obligations and restrictions which inhere in that relation as to property entrusted to them. The shares are mere evidence of property or of the interest which the stockholder has in the property of the corporation under the control of the
360 directors. In their sale the stockholder disposes not only of the part which represents his interest, but his actual holdings in such property, and when the director deals with the stockholder for the purchase of shares, he is not buying paper merely but in effect is buying an undivided and substantial interest in property which has been committed to his care, custody and management, and when the stockholders elect a director for the purpose of managing the business of the corporation, the said director, when he accepts the position, thereby puts himself into the position of an agent of the said stockholders and occupies a fiduciary relation or position which is not altogether unlike the relation which attorneys, bailees, partners, trustees or any other fiduciaries occupy, and must exercise the highest degree of good faith as to all matters connected with the property committed to his care.

"In many instances a stockholder of a corporation who happens to own a majority of the stock elects himself as a director of the same and thereby, by virtue of such majority stock, controls the policy of the corporation, decides what may or may not be done in the management of the corporation and cases are not infrequent where such director so mismanages the affairs of the corporation that the stock of such corporations become- absolutely worthless. If such management is due to misjudgment, the stockholders are simply unfortunate in being related in business affairs with a man of such business ability. If, however, the conduct of such a director is fraudulent in his relation to the other stockholders and by virtue of such fraud he derives benefit to the detriment of the interest of the other stockholders, he must respond to them in damages to whatever amount such fraudulent conduct has injured them.

"2nd Pomeroy's Equity Jurisprudence, 2nd Edition, Section
361 963.

"Stubinger *vs.* Frey, 116 Ga. 398;

"42 S. E. Reporter, 713.

"The suppression of the truth by one whose duty it is to speak may amount to a suggestion of falsehood; and such suppression is made with the intent to deceive or to gain advantage when he is bound in good faith to disclose, this is evidence of and equivalent to a false representation.

"Stuart *vs.* Wyoming Ranch Co., 128 U. S. 388;

"Coulton *vs.* Leland Stanford, 82 Cal. 351;

"23 Pacific Reporter, 316;

"16 American State Reports, 137.

"In the cause of Stewart *vs.* Harris (77 Pacific Reporter, 277) decided June 11, 1904, there was presented to the Supreme Court of Kansas a question very similar to the one which we are now deciding. That was an action by a stockholder of the Wellington National Bank to recover of the president of said corporation the difference between the amount which the plaintiff had received for his stock in the said corporation and the actual value of said stock at the time he sold the same to the said president. The plaintiff, for his cause of action, alleged that the defendant had withheld from him at the time of the purchase of the stock certain information which it was his duty as president of said corporation to disclose; in other words, the plaintiff claimed that the president withheld certain information concerning the real financial condition of the corporation which it was his duty to disclose to the stockholders when he, the president, was attempting to buy their stock. In deciding that question, the court said:

362 " 'The managing officers of a corporation are not only trustees in relation to the corporate entity and the corporate property, but they are also, to some extent, and in many respects trustees of the corporate stockholders. That they are trustees for the corporation and the corporate property all the authorities are agreed. It would be difficult to lay down a general rule comprehensive of the extent of all instances in which their trusteeship exists as to the stockholders of the corporation."

"The relation between the directors of a corporation and its stockholders is that of trustees and *cestui que* trust. Directors are persons selected to manage the business of the company for the benefit of the stockholders. It is an office of trust which if they undertake it is their duty to perform fully and entirely. No director of a corporation or company can use his position to secure personal advantage to himself.

"Sargent *vs.* Railroad Company, 48 Kansas, 672;
"29 Pacific Reporter, 1063.

"If, then, this is the relation between the managing directors of a corporation and the stockholders of said corporation, the general rule applicable to the purchase and sale between parties who sustain to each other a financial or fiduciary relation is applicable. That rule is, in order for a purchaser or a director who purchases stock from the stockholders to be able to sustain the purchase, he must show affirmatively that the transaction was conducted in perfect good faith, without pressure of influence on his part and with express knowledge of the circumstances and entire freedom of action on the part of the stockholder.

"Dunn *vs.* Dunn, 42 N. J. Equity, 431;
363 "7 Atlantic Reporter, 842.

"In the case of Goodin *vs.* Cincinnati *et al.* Canal Co. (18 Ohio State, 169) the Supreme Court of Ohio said:

"A director of a corporation represents the stockholders and their interests as such; he is trustee for the company and whenever he acts against their interest, no matter how much he thereby benefits for-

eign interests of individual stockholders or how many individual stockholders act with them, he is guilty of a breach of trust and a court of equity will set aside his acts at the instance of the stockholders or creditors who are damnified thereby. Any act of directors by which they intentionally diminish the value of the stock or property of the company is a breach of trust for which any of the stockholders or creditors may justly complain.

"U. S. Rolling Stock Company *vs.* Atlantic *et al.* Railroad Company, 34 Ohio State, 461;

"Hodges *vs.* New England Screw Company, 53 American Decisions, 646.

"In the case of Janney *et al. vs.* Minneapolis Industrial Exposition *et al.* (50 L. R. A. 273), decided by the Supreme Court of Minnesota May 25th, 1900, the court said:

" 'The relation between the corporation and its directors is that of principal and managing agents. They are not trustees in the sense of holding legal title to any of its property for its benefit or that of its stockholders or its creditors. Still the relation is essentially a fiduciary one, and upon sound principles of public policy, directors are inhibited, as a general rule, from purchasing for their own benefit the property of the corporation, very much as a trustee is disqualified from purchasing for his own advantage the property of his
364 *cestui que* trust. This proposition upon principle and authority is unquestionably the law.

" 'In all cases where a director purchases stock of a stockholder he must act in the utmost good faith, for the transaction will be jealously scrutinized.'

"1 Marowitz Private Corporation, Section 527;

"3 Commentaries on the Law of Corporation by Thompson, Sections 4068 and 4074.

"Barber *vs.* Bowen, 47 Minn. 118;

"Lusk's Appeal, 108 Penn. 152.

"In the case of Twin-Lick Oil Company *vs.* Marburg (91 U. S. 587) Justice Miller of the Supreme Court of the United States said:

" 'That a director of a corporation occupies one of those fiduciary relations where his dealings with the subject matter of his trust or agency and with the beneficiary or party whose interest is confined to his care is viewed with jealousy by the courts and may be set aside on slight grounds is a doctrine founded on the soundest morality and which has received the clearest recognition in this court and in others.'

"Koehler *vs.* Black River Falls Iron Co., 2 Black (U. S.) 715;

"Drury *vs.* Cross, 74 U. S. 299;

"Luxembourg Railroad Co. *vs.* Maquay, 25 Beav. (English) 586.

"Cumberland Company *vs.* Sherman, 30 Barber (N. Y.) 553.

"In the case of Walsham *vs.* Stainton (1 De Gex. J. and S. 678), cited by Judge Taft in the case of Richey *vs.* McMullen (79 Fed. Rep. 522, 534), the facts charged by the plaintiff were as follows:

"Joseph Stainton was the manager and Henry Stainton the
365 London agent of the Carron Company, a corporation. The Staintons entered into a conspiracy to secure to themselves the whole benefit of the company, etc., etc., keeping the accounts of the company fraudulently, so as to conceal from the shareholders the real value of the shares, in order that they themselves might buy up at an under value, such shares as were offered for sale, and at the same time make themselves a majority of the votes at the meetings of the company. To carry out this plan the Staintons retained in their hands large funds belonging to the company, which never appeared in the earnings and so reduced the dividends. By these means the market value of the shares of stock was kept much below their real value. As a result Henry Stainton purchased forty shares and one of his co-conspirators fifteen shares at a price much below a fair value. When these facts were discovered the company compelled the Staintons, or their representatives, to account for the large amount of money retained by them; the representatives of the sellers of the stock filed a petition to compel the return of the stock still held by Henry Stainton's representatives and to compel the estate of Joseph and Henry Stainton to make good the difference between the price at which the fifteen shares of stock now in the hands of an innocent purchaser had been sold to Joseph Stainton, and its real value, and to compel an accounting for all dividends received on the stock since the sale. To this petition, the defendants filed a demurrer which was sustained in the lower Court, but on appeal the House of Lords reversed the ruling of the lower court and held that the appeal constituted a good ground for relief and that each wrongdoer might be compelled to make good to the defrauded owners of shares the loss, without regard to his having profited by the fraud. Judge
366 Taft in commenting upon this decision stated:

"'This case illustrates, in quite a satisfactory way, how managers of corporations may so conduct the affairs of the corporation as to incur a direct liability to the stockholders in respect to their particular stock.'

"In the case of Jackson *vs.* Ludeling (88 U. S. 616) the Supreme Court of the United States said in substance:

"'The managing officers of a company or corporation where capital is contributed in shares are in a very legitimate sense trustees alike for its stockholders and its creditors, though they may not be trustees technically and in form. They accordingly have no right to enter into or participate in any combination the object of which is to divest the company of its property and obtain it for themselves at a sacrifice; they have no right to seek their own profit at the expense of the company and its stockholders or even its bondholders.'

"Cases from almost every state in the Union might be cited to support the doctrine herein contended for, that the director, and especially the manager of a corporation, in his dealings with the stockholders of such corporation, acts in a fiduciary relation and is bound to act with the utmost good faith. He can not secretly bring about conditions by which he himself will receive large benefits at the expense of the stockholders. If he does, he is liable to respond

to them for whatever injury his secret and fraudulent acts have done them. He is not prohibited from dealing in the stock of the corporation, but if he does, he must do so honestly and above-board.

"McClure *vs.* Law, 161 N. Y., 78; 76 Am Resp. 262;
"Goodhue Farmers' Warehouse Co. *vs.* Davis, 81 Minn. 210; 83 N. W. Rep., 531;
367 "Briggs *vs.* Spaulding, 141 U. S. 146;
"The North Hudson Building Co. etc. *vs.* Childs, *et al.*, 82 Wis. 460; 83 Am. State Reps. 57;
"Killen *vs.* State Bank, 106 Wis. 546; 82 N. W. Rep. 536;
"Marshall *vs.* Farmers' etc. Bank, 85 Va. 676; 17 Am. State Reps. 84;
"Ellis *et al. vs.* Ward *et al.*, 137 Ill. 509.

"It is not contended that the directors or managers of a corporation are liable to the stockholders when they exercise ordinary care, skill and diligence in the management of the affairs of the corporation and loss occurs. They are not liable for errors of judgment and mistakes of fact or of law when they act in good faith and with proper care. They are liable, however, when by their secret connivance or by fraudulent conduct they have made great profits at the expense of the stockholders.

"Farmers' Trust & Loan Co. *vs.* The New York & Northern Ry. Co., 150 N. Y. 410.
"Deadrick *vs.* Wilson, 55 Tenn. (8th Baxter) 108.

"The Court has voted to reverse its first decision in this case upon the ground that the new evidence presented shows that Jones had full authority to dispose of the said stock of the plaintiff. Under the view which I take of the case it is of no importance whether the defendant purchased the stock of the plaintiff or of her agent. The defendant owed the same fidelity to the agent of the plaintiff that he owed to the plaintiff. The defendant well knew that Jones was attempting to act as agent of the plaintiff.

"If, however, the question here presented is to be decided upon the fact that Jones had or had not *express* authority to sell the said stock of the plaintiff, then I contend that the document introduced
368 as evidence in the rehearing does not give Jones express authority to sell the stocks in question here.

"The judgment of the lower Court should be affirmed with costs.
(Signed) E. FINLEY JOHNSON."

To the rendition of which last decision said plaintiffs, by counsel, then and there excepted.

And thereafter, to wit, on the 7th day of December, 1905, judgment was entered upon said decision of said Supreme Court, and the plaintiffs, by counsel, then and there filed their exception, which reads in words and figures as follows, to wit:

(Title and Heading.)

"Come now the plaintiffs, by their attorneys, and except to the judgment this day entered in said cause."

And now, in presenting their bill of exceptions, plaintiffs state that said exception of December 7, 1906, was and is based on the following grounds, to wit:

That the judgment of the Court of First Instance should be affirmed, because it appears from the record in said cause that on May 2, 1904, after the rendition of judgment in the Court of First Instance, defendant made a motion for a new trial, which said motion reads in words and figures as follows, to wit:

(Title and Heading.)

"Now comes the above named defendant, by his attorneys, Hartigan, Marple, Solignac & Gutierrez, and respectfully prays the Court to dismiss the judgment rendered in the same and to grant a new trial:

"First. Because the evidence in the case is insufficient to
369 justify the judgment rendered by this Court, because the decision and findings are clearly and manifestly opposed to the weight of the evidence in said cause and because said judgment is contrary to law.

"Second. That due to facts which occurred during the trial of said cause and subsequent thereto, the substantial rights of the defendant were materially affected, and by reason thereof the defendant has probably been prejudiced in his said rights, facts which are set forth in the affidavit which is attached hereto in support of this petition.

"Manila, May 2, 1904.

"HARTIGAN, MARPLE, SOLIGNAC & GUTIERREZ,
Attorneys for Defendant."

That on the 3rd day of May, 1904, and before any ruling had been made upon said motion, said defendant excepted to the judgment theretofore entered in said cause, and gave notice that he would present his Bill of Exceptions, which notice reads in words and figures as follows, to wit:

(Title and Heading.)

"Now comes the defendant in the above entitled cause, by his attorneys, Hartigan, Marple, Solignac & Gutierrez, and excepts to the judgment of the Court in this case, and hereby gives notice of his intention to perfect a Bill of Exceptions to carry it to the Supreme Court for review of all the decisions, records and of the judgment of the Court upon said trial.

"Manila, May 3, 1904.

"HARTIGAN, MARPLE, SOLIGNAC & GUTIERREZ,
Attorneys for Defendant."

Whereby said defendant waived said motion for a new trial, the notice of filing a Bill of Exceptions being inconsistent with
370 the motion for a new trial, and said cause stood as though no motion for a new trial had been made; and the findings of

fact made by the Court of First Instance became conclusive, and no authority exists to receive any new or additional evidence or to review the evidence taken in said cause in said Court of First Instance; which reason for affirming the judgment of the Court of First Instance is now for the first time presented to the Supreme Court upon making application to settle the exceptions, the Supreme Court at the time sitting in bank in regular session.

And forasmuch as the matters aforesaid and the decision of the Court thereon do not appear of record, the plaintiffs pray that this, their Bill of Exceptions, may be allowed, which is done accordingly this 12th day of December, 1906, the same being one of the regular juridical days of the term of said Supreme Court of the Philippine Islands at which said final judgment in said cause was rendered and entered.

C. S. ARELLANO, [SEAL.]
Chief Justice of the Supreme Court of the Philippine Islands.

Manila, P. I., December 12th, 1906.

Attest:
J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands. [SEAL.]

371 And thereafter, to wit, on the thirteenth day of December, nineteen hundred and six, said plaintiffs and appellees filed in said cause their assignment of errors, praying that the judgment of the Supreme Court of the Philippine Islands may be reversed, the original of which assignment of errors is attached hereto.

And thereafter, to wit, on the eighteenth day of December, nineteen hundred and six, said plaintiffs presented their petition to the Honorable Chief Justice of the Supreme Court of the Philippine Islands, praying for the allowance of a writ of error, together with the affidavit of W. H. Lawrence, which affidavit reads in words and figures as follows, to wit:

"UNITED STATES OF AMERICA, *Philippine Islands:*

"In the Supreme Court of the Philippine Islands.

R. G. No. 2101.

"ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellees,
versus
"FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

"W. H. Lawrence, first being duly sworn according to law, on his oath does depose and say:

"That he is one of the attorneys for the plaintiffs and appellees in the above entitled cause; that said action was brought to recover

eight hundred shares of the capital stock of the Philippine Sugar Estates Development Company, Limited, of the par value of one hundred pesos, Mexican currency, per share, and of the total
372 par value of eighty thousand pesos, Mexican Currency, which is equivalent to forty thousand dollars, lawful money of the United States of America; and that the actual value of said shares in controversy in said action is seventy-six thousand two hundred and fifty-six dollars, lawful money of the United States of America, and that the actual amount involved in this action exceeds the sum of twenty-five thousand dollars, lawful money of the United States of America.

W. H. LAWRENCE.

"Subscribed and sworn to before me this thirteenth day of December, nineteen hundred and six, the said W. H. Lawrence exhibiting to me his personal cedula number 1322502, issued at Manila, Philippine Islands, on the second day of January, nineteen hundred and six.

[NOTARIAL SEAL.] THOS. D. AITKEN,
Notary Public.

(Revenue Stamp.)
My Commission expires December 31, 1906."

Whereupon an order was made which reads in words and figures as follows, to wit:

"UNITED STATES OF AMERICA, *Philippine Islands:*

"In the Supreme Court of the Philippine Islands.

R. G. No. 2101.

"ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellees,
versus
"FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

"This eighteenth day of December, in the year of our Lord
373 nineteen hundred and six, come the plaintiffs by their attorneys, and file herein and present to the court their petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by them having been filed herein, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

"On consideration whereof the court does allow the writ of error, returnable April tenth, nineteen hundred and seven, upon the plaintiffs giving bond according to law in the sum of one thousand

dollars, lawful money of the United States of America, which shall operate as a supersedeas bond.

C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands."

[Seal of Supreme Court.]

And thereafter, to wit, on the eighteenth day of December, nineteen hundred and six, a writ of error was issued in accordance with said order, together with a citation to said Francisco Gutierrez Répide, which writ and citation, together with the return thereon, are attached to this record; and on the same day plaintiffs filed their bond in the sum of One Thousand Dollars, lawful money of the United States of America, in accordance with the order of the Honorable Chief Justice theretofore made herein, which bond was approved by the Honorable C. S. Arellano, Chief Justice of the Supreme Court of the Philippine Islands.

374 UNITED STATES OF AMERICA, *Philippine Islands, ss:*

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing typewritten pages, numbered 1 to 249, inclusive, 264 to 296, inclusive, 298, and 300 to 373, inclusive, contain a full, true and correct transcript of the record and proceedings in the case of Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs in error, *versus* Francisco Gutierrez Répide, defendant in error, and that all opinions rendered in said cause are contained in said transcript; such part of said record as is in the Spanish language having been translated into the English language, and that said translation is true and correct.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands, this 8th day of March, nineteen hundred and seven.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

375 Know all Men by these Presents:

That we, Eleanor Erica Strong and Richard P. Strong, her husband, as principals, and C. Kingcome and J. N. Sidebottom, as sureties, all residents of the Philippine Islands, are held and firmly bound unto Francisco Gutierrez Répide in the full and just sum of One Thousand Dollars, lawful money of the United States of America, to be paid to the said Francisco Gutierrez Répide, his attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 19th day of December, in the year of our Lord one thousand nine hundred and six.

Whereas, lately in the Supreme Court of the Philippine Islands,

in a suit depending in said Court between Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs, and Francisco Gutierrez Répide, defendant, a judgment was rendered against said plaintiffs, Eleanor Erica Strong and Richard P. Strong, her husband, and the said plaintiffs, Eleanor Erica Strong and Richard P. Strong, her husband, having obtained a writ of error and filed a copy thereof in the clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Francisco Gutierrez Répide, citing and admonishing him to be and appear at a session of the Supreme Court of the United States, to be held at the City of Washington on the tenth day of April next,

Now, the condition of the above obligation is such that if the said Eleanor Erica Strong and Richard P. Strong, her husband, shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above
376 obligation to be void; else to remain in full force and virtue.

ELEANOR ERICA STRONG. [SEAL.]
RICHARD P. STRONG. [SEAL.]
CLIVE KINGCOME. [SEAL.]
J. N. SIDEBOTTOM. [SEAL.]

Sealed and delivered in presence of
TH. COLSTON KINNEY.
J. N. NOON.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

On this 19th day of December, nineteen hundred and six, before me, Thos. D. Aitken, a notary public in and for said city of Manila, personally appeared C. Kingcome and J. N. Sidebottom, the sureties named in the foregoing obligation, and being severally duly sworn, according to law, each for himself does depose and say:

That he is worth the sum mentioned in the foregoing bond, over and above all his just debts and liabilities, in property within the Philippine Islands not exempt from execution.

CLIVE KINGCOME.
J. N. SIDEBOTTOM.

Subscribed and sworn to before me this 19th day of December, nineteen hundred and six; the said C. Kingcome exhibiting to me his personal cedula No. 177870, issued at Manila, Philippine Islands, on the twenty-eighth day of August, nineteen hundred and six; and the said J. N. Sidebottom exhibiting to me his personal
377 cedula No. 1322438, issued at Manila, Philippine Islands, on the second day of January, nineteen hundred and six.

[NOTARIAL SEAL.] THOS. D. AITKEN,
Notary Public.

My Commission expires December 31, 1906.

Approved by
C. S. ARELLANO,
Chief Justice of the Supreme Court.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing is a true and correct copy of the original writ of error bond filed in the case of Eleanor Erica Strong, *et al., vs.* Francisco Gutierrez Répide, R. G. No. 2101.

Given under my hand and seal at Manila, Philippine Islands, this eighth day of March, A. D. nineteen hundred and seven.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court, P. I.

378 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Chief Justice and Associate Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs, and Francisco Gutierrez Répide, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, Eleanor Erica Strong and Richard P. Strong, her husband, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the tenth day of April next, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the eighteenth day
379 of December, in the year of our Lord one thousand nine hundred and six.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Allowed by
C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

380 UNITED STATES OF AMERICA,
Philippine Islands.

In the Supreme Court of the Philippine Islands.

R. G. No. 2101.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellees,
versus
FRANCISCO GUTIERREZ RÉPIDE, Defendant and Appellant.

This eighteenth day of December, in the year of our Lord nineteen hundred and six, come the plaintiffs by their attorneys, and file herein and present to the court their petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by them having been filed herein, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error, returnable April tenth, nineteen hundred and seven, upon the plaintiffs giving bond according to law in the sum of one thousand dollars, lawful money of the United States of America, which shall operate as a supersedeas bond.

C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

SUPREME COURT OF THE PHILIPPINES, CLERK'S OFFICE.
Filed Dec. 18, 1906, — M.

381 UNITED STATES OF AMERICA, *ss:*

To Francisco Gutierrez Répide, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, on the tenth day of April next, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Eleanor Erica Strong and Richard P. Strong, her husband, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the City of Manila, Philippine Islands,

this eighteenth day of December, in the year of our Lord one thousand nine hundred and six.

C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

Received copy for defendant in error.

HARTIGAN, ROHDE & GUTIERREZ,
Att'ys for Defendant in Error.

SUPREME COURT OF THE PHILIPPINES, CLERK'S OFFICE.

Filed Dec. 20, 1906, — M.

Endorsed on cover: File No. 20,766. Philippine Islands supreme court. Term No. 110. Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs in error, *vs.* Francisco Gutierrez Répide. Filed June 20, 1907. File No. 20,766.

16

(20,766.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 110.

ELEANOR ERICA STRONG AND RICHARD P. STRONG, HER HUSBAND, PLAINTIFFS IN ERROR,

vs.

FRANCISCO GUTIERREZ REPIDE.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1909.

1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2101.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellants,

versus

FRANCISCO GUTIÉRREZ RÉPIDE, Defendant and Appellee.

Be it remembered, that in the above-entitled cause, theretofore tried and determined in the Supreme Court of the Philippine Islands, wherein Eleanor Erica Strong and Richard P. Strong, her husband, were plaintiffs, and Francisco Gutiérrez Répide was defendant, wherein a final decision was rendered on the 15th day of November, 1906, thereafter, on the 10th day of September, 1907, there was filed in said cause in said Court an assignment of errors which reads in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

R. G. No. 2101.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellants,

vs.

FRANCISCO GUTIERREZ REPIDE, Defendant and Appellee.

Assignment of Errors.

2 Comes the said Eleanor Erica Strong and Richard P. Strong, her husband, by Kinney & Lawrence, their attorneys, and say that in the record and proceedings in the above entitled cause there is manifest error.

Wherefore plaintiffs pray an appeal from the final decree of this Court to the Supreme Court of the United States, and assign for error the following:

I.

The Court erred in finding that defendant violated no duty in not communicating to plaintiff his purpose in buying her shares, and has been guilty of no fraud.

II.

The Court erred in entertaining the motion of the defendant for a new trial over the objection of said plaintiffs, said cause, at the time of filing said motion, having been fully determined by the Supreme Court.

III.

The Court erred in granting a motion for a new trial, it affirmatively appearing by the affidavits in support of said motion that the power of attorney in question therein was, during the trial of the case in the Court below, in the possession of the defendant, and that the defendant and his attorneys had full knowledge of the contents of said power of attorney and could have testified to the contents thereof.

IV.

The Court erred in admitting the power of attorney which formed the basis of the motion for a new trial, in evidence against the objection of the plaintiffs, there being no express authority
3 granted to the attorney named in said power of attorney to sell the shares in controversy in this action.

V.

The Court erred in rendering its decision setting aside its former decision and reversing the judgment of the Court of First instance.

VI.

The Court erred in rendering judgment against said plaintiffs and in favor of said defendant.

VII.

The Court erred in failing to affirm the judgment of the Court below in favor of said plaintiffs and against said defendant.

Wherefore said plaintiffs Eleanor Erica Strong and Richard P. Strong, her husband, pray that the judgment of the Supreme Court of the Philippine Islands be reversed.

KINNEY & LAWRENCE,
KINNEY, ODLIN & LAWRENCE,
Attorneys for Plaintiffs.

Manila, September 10, 1907.

And, at the same time, there was filed therein an affidavit which reads in words and figures as follows, to wit:

4 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2101.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs and Appellants,
vs.
FRANCISCO GUTIÉRREZ RÉPIDE, Defendant and Appellee.

Affidavit.

W. H. Lawrence, being first duly sworn according to law, on his oath does depose and say:

That he is one of the attorneys for the plaintiffs and appellants in the above entitled cause; that said action was brought to recover eight hundred shares of the capital stock of the Philippine Sugar Estates Development Company, Limited, of the par value of one hundred pesos, Mexican currency, per share, and of the total par value of eighty thousand pesos, Mexican currency, which is equivalent to forty thousand dollars, lawful money of the United States of America and that the actual value of said shares in controversy in said action is seventy-six thousand two hundred and fifty-six dollars, lawful money of the United States of America, and that the actual amount involved in this action exceeds the sum of twenty-five thousand dollars, lawful money of the United States of America.

W. H. LAWRENCE.

Subscribed and sworn to before me this 10th day of September, 1907, the said W. H. Lawrence exhibiting to me his personal
5 cedula number A-765330, issued at Iloilo, Philippine Islands, on the 17th day of January, 1907.

THOS. D. AITKEN, [SEAL.]
Notary Public.

(Stamp.)

My commission expires December 31, 1908.

And thereafter, on the same day, there was filed in said cause, in said Court, the petition of the plaintiffs for an appeal, which petition, together with the allowance thereof on the 13th day of September, 1907, reads in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

R. G. No. 2101.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs,

vs.

FRANCISCO GUTIERREZ REPIDE, Defendant.

Petition for Appeal.

The petitioners, Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs herein, respectfully represent to the Court:

That heretofore, to wit, on or about the 18th day of December, 1906, a writ of error was sued out in said cause, but inasmuch as the practice and proceedings for obtaining a review in the
6 Supreme Court of the United States are uncertain and doubtful, your petitioners now pray that an appeal may be allowed, and they do appeal, to the Supreme Court of the United States, from the judgment in said cause rendered on the 16th day of November, 1906, for the reasons specified in the assignment of errors filed herewith, and that the supersedeas bond heretofore filed may, in the event that it shall be determined that said cause should be reviewed on appeal instead of on writ of error, stand as the supersedeas bond in said cause on appeal; and your petitioners file herewith an affidavit showing that the value of the property involved in said cause exceeds twenty-five thousand dollars, United States currency.

And your petitioners pray that the said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., this 10th day of September, 1907.

KINNEY, ODLIN & LAWRENCE,
Attorneys for Plaintiffs.

The foregoing claim of appeal is allowed this 13th day of September, 1907.

[Seal of the Supreme Court.]

C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

And on said 13th day of September, 1907, there was filed in said cause, in said Court, a bond which reads in words and figures as follows, to wit:

7 Know all men by these presents:

That Eleanor Erica Strong, by Francis Stuart Jones, her attorney-in-fact, and Richard P. Strong, by Smith, Bell & Company, his attorney-in-fact, as principals, and J. N. Sidebottom and C. Kingcome, as sureties, all residents of the Philippine Islands, are held and firmly bound unto Francisco Gutiérrez Répide in the full and just sum of One Thousand Dollars, lawful money of the United States of America, to be paid to said Francisco Gutiérrez Répide, his attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this eleventh day of September, one thousand nine hundred and seven.

Whereas, lately, in the Supreme Court of the Philippine Islands, in a suit depending in said Court between Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs, and Francisco Gutiérrez Répide, defendant, a judgment was rendered against said plaintiffs, Eleanor Erica Strong and Richard P. Strong, her husband, and the said plaintiffs, Eleanor Erica Strong and Richard P. Strong, her husband, having obtained an appeal from said judgment in the aforesaid suit to the Supreme Court of the United States and a citation to the said Francisco Gutiérrez Répide citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington on the thirtieth day of December, one thousand nine hundred and seven:

Now, the condition of the above obligation is such that if the said Eleanor Erica Strong and Richard P. Strong, her husband, shall prosecute said appeal to effect and answer all damages and
8 costs if they fail to make their plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

ELEANOR ERICA STRONG,
By F. STUART JONES. [SEAL.]
RICHARD P. STRONG,
By SMITH, BELL & CO., [SEAL.]
By F. STUART JONES.
J. N. SIDEBOTTOM. [SEAL.]
C. KINGCOME. [SEAL.]

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

On this 12th day of September, one thousand nine hundred and seven, before me W. H. Lawrence, a notary public in and for said City of Manila, personally appeared Francis Stuart Jones, and, being duly sworn according to law, deposed and said: That he is the authorized agent of Eleanor Erica Strong, and that he executed the foregoing bond as such agent, and that the same is the free and voluntary act and deed of the said Eleanor Erica Strong; and appeared also the said Francis Stuart Jones, who, first being duly sworn according to law, deposed and said: That he is the manager of Smith, Bell & Company, and that the said Smith, Bell & Com-

pany are the duly authorized agents of Richard P. Strong, and that he signed the name of Smith, Bell & Company to the foregoing bond as such agent, and that the same is the free and voluntary act and deed of the said Richard P. Strong; and appeared also before me J. N. Sidebottom and C. Kingcome, the sureties named in the foregoing obligation, and, being severally duly sworn, according
9 to law, each for himself did depose and say:

That he is worth the sum mentioned in the foregoing bond, over and above his just debts and liabilities, in property within the Philippine Islands not exempt from execution.

J. N. SIDEBOTTOM.
C. KINGCOME.
F. STUART JONES.

Subscribed and sworn to before me this twelfth day of September, one thousand nine hundred and seven, and the said Francis Stuart Jones exhibited to me his personal cedula No. D 443, issued at Manila, P. I., the 14th day of May, one thousand nine hundred and seven; and the said J. N. Sidebottom exhibited to me his personal cedula No. A 1482247, issued at Manila, P. I., the 24th day of January, one thousand nine hundred and seven; and the said C. Kingcome exhibited to me his personal cedula No. A 1482248, issued at Manila, P. I., the 24th day of January, one thousand nine hundred and seven.

[SEAL.] W. H. LAWRENCE,
Notary Public.

(Stamp.)

My commission expires December 31, 1908.

Approved by:
[SEAL.] C. S. ARELLANO,
Chief Justice of the Supreme Court.

10 And on the same day, to wit, on the 13th day of September, 1907, there was issued in said cause a citation which, together with the return thereon, reads in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Francisco Gutiérrez Répide, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, within one hundred and twenty days from the date of this writ, to wit, on the thirtieth day of December, nineteen hundred and seven, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands, filed in the Clerk's Office of the said Court on the thirteenth day of September, nineteen hundred and seven, in a case wherein Eleanor Erica Strong and Richard P. Strong, her

husband, are appellants and you are appellee, to show cause, if any, why the decree rendered against said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States.

(Signed) R. HERAS,
Acting Clerk of the Supreme Court
of the Philippine Islands.

11 Allowed by:
[SEAL.] C. S. ARELLANO,
Chief Justice of the Supreme Court of
the Philippine Islands.

MANILA, PHILIPPINE ISLANDS.

This 16th day of September, 1907, we have received a copy of the within citation.

FRANCISCO GUTIÉRREZ RÉPIDE,
The Appellee Therein Named.
HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Appellee.

That theretofore a full, true, and complete transcript of the record in said cause, duly authenticated, had been attached to and made a part of the return to a writ of error sued out of the Supreme Court of the United States, dated the 18th day of December, 1906, which transcript of record was thereafter duly filed in the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Philippine Islands, ss:

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing typewritten pages, numbered 1 to 11, inclusive, contain a full, true, and correct tran-
12 script of the record and proceedings in the case of Eleanor Erica Strong and Richard P. Strong, her husband, appellants, *versus* Francisco Gutiérrez Répide, appellee, from the 18th day of December, 1906, to the day of the date hereof; and that a full, true, and correct transcript of the record and proceedings in said cause prior to said 18th day of December, 1906, including all opinions rendered in said cause, was returned to the Supreme Court of the United States, in obedience to a writ of error dated said 18th day of December, 1906; and I further certify that the bond hereto attached is the copy of the bond filed in said cause, and that the original citation, together with the return thereon, is also hereto attached.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands, this 16th day of September, 1907.

R. HERAS,
Acting Clerk of the Supreme Court
of the Philippine Islands.

13 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

R. G. No. 2101.

ELEANOR ERICA STRONG and RICHARD P. STRONG, Her Husband, Plaintiffs,
vs.
FRANCISCO GUTIERREZ REPIDE, Defendant.

Petition for Appeal.

The petitioners, Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs herein, respectfully represent to the Court:

That heretofore, to wit, on or about the 18th day of December, 1906, a writ of error was sued out in said cause, but inasmuch as the practice and proceedings for obtaining a review in the Supreme Court of the United States are uncertain and doubtful, your petitioners now pray that an appeal may be allowed, and they do appeal, to the Supreme Court of the United States, from the judgment in said cause rendered on the 16th day of November, 1906, for the reasons specified in the assignment of errors filed herewith, and that the supersedeas bond heretofore filed may, in the event that it shall be determined that said cause should be reviewed on appeal instead of on writ of error, stand as the supersedeas bond in said cause on appeal; and your petitioners file herewith an affidavit showing that the value of the property involved in said cause exceeds Twenty-five
14 Thousand Dollars, United States currency.

And your petitioners pray that the said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., this 10th day of September, 1907.

KINNEY, ODLIN & LAWRENCE,
Attorneys for Plaintiffs.

The foregoing claim of appeal is allowed this 13th day of September, 1907.

[Seal Corte Suprema, Islas Filipinas.]

C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

15 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Francisco Gutiérrez Répide, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington,

within one hundred and twenty days from the date of this Writ, to wit, on the thirtieth day of December, nineteen hundred and seven, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands, filed in the Clerk's Office of the said Court on the Thirteenth day of September, nineteen hundred and seven, in a case wherein Eleanor Erica Strong and Richard P. Strong, her husband, are appellants and you are appellee, to show cause, if any, why the decree rendered against said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness: Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States.

R. HERAS,
Acting Clerk of the Supreme Court of the Philippine Islands.

Allowed by:

[Corte Suprema, Islas Filipinas.]

C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

September 14th, 1907.

Recibida copia.

HARTIGAN, ROHDE & GUTIERREZ,
Att'ys for Appellee.

15½ MANILA, PHILIPPINE ISLANDS.

This 16th day of September, 1907, we have received a copy of the within citation.

FRANCISCO GUTIÉRREZ RÉPIDE,
The Appellee Therein Named.
HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Appellee.

16 Know all men by these presents:

That Eleanor Erica Strong, by Francis Stuart Jones, her attorney-in-fact, and Richard P. Strong, by Smith, Bell & Company, his attorney-in-fact, as principals, and J. N. Sidebottom and C. Kingcome, as sureties, all residents of the Philippine Islands, are held and firmly bound unto Francisco Gutiérrez Répide in the full and just sum of One Thousand Dollars, lawful money of the United States of America, to be paid to said Francisco Gutiérrez Répide, his attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this eleventh day of September, one thousand nine hundred and seven.

Whereas, lately, in the Supreme Court of the Philippine Islands, in a suit depending in said Court between Eleanor Erica Strong and Richard P. Strong, her husband, plaintiffs, and Francisco Gutiérrez

Répide, defendant, a judgment was rendered against said plaintiffs, Eleanor Erica Strong and Richard P. Strong, her husband, and the said plaintiffs, Eleanor Erica Strong and Richard P. Strong, her husband, having obtained an appeal from said judgment in the aforesaid suit to the Supreme Court of the United States and a citation to the said Francisco Gutiérrez Répide citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington on the thirtieth day of December, one thousand nine hundred and seven:

Now, the condition of the above obligation is such that if the said Eleanor Erica Strong and Richard P. Strong, her husband, shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

17

ELEANOR ERICA STRONG,
(Sgd.) By F. STUART JONES. [SEAL.]
RICHARD P. STRONG,
(Sgd.) By SMITH, BELL & CO., [SEAL.]
By F. STUART JONES.
(Sgd.) J. N. SIDEBOTTOM. [SEAL.]
(Sgd.) C. KINGCOME. [SEAL.]

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

On this 12th day of September, one thousand nine hundred and seven, before me W. H. Lawrence, a notary public in and for said City of Manila, personally appeared Francis Stuart Jones, and, being duly sworn according to law, deposed and said: That he is the authorized agent of Eleanor Erica Strong, and that he executed the foregoing bond as such agent, and that the same is the free and voluntary act and deed of the said Eleanor Erica Strong; and appeared also the said Francis Stuart Jones, who, first being duly sworn according to law, deposed and said: That he is the manager of Smith, Bell & Company, and that the said Smith, Bell & Company are the duly authorized agents of Richard P. Strong, and that he signed the name of Smith, Bell & Company to the foregoing bond as such agent, and that the same is the free and voluntary act and deed of the said Richard P. Strong; and appeared also before me J. N. Sidebottom and C. Kingcome, the sureties named in the foregoing obligation, and, being severally duly sworn, according to law, each for himself did depose and say

18

That he is worth the sum mentioned in the foregoing bond, over and above his just debts and liabilities, in property within the Philippine Islands not exempt from execution.

(Sgd.) J. N. SIDEBOTTOM.
(Sgd.) C. KINGCOME.
(Sgd.) F. STUART JONES.

Subscribed and sworn to before me this twelfth day of September, one thousand nine hundred and seven, and the said Francis Stuart Jones exhibited to me his personal cedula No. D 443, issued at Manila, P. I., the 14th day of May, one thousand nine hundred and seven; and the said J. N. Sidebottom exhibited to me his personal cedula No. A 1482247, issued at Manila, P. I., the 24th day of January, one thousand nine hundred and seven; and the said C. Kingcome exhibited to me his personal cedula No. A 1482248, issued at Manila, P. I., the 24th day of January, one thousand nine
19 hundred and seven.

W. H. LAWRENCE,
Notary Public.

(Stamp.)

My commission expires December 31, 1908.

Approved by:
(Sgd.) C. S. ARELLANO,
Chief Justice of the Supreme Court.

20 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Eleanor Erica Strong and Richard P. Strong, her husband, were Complainants, and Francisco Gutierrez Repide, defendants, a final decree was rendered by said Court on the 7th day of December, A. D. 1906, in favor of the said Francisco Gutierrez Repide, and against the said Eleanor Erica Strong and Richard P. Strong, her husband, and that on the 10th day of September, A. D. 1907, said Eleanor Erica Strong and Richard P. Strong, her husband, prayed an appeal to the Supreme Court of the United States, which was allowed.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of the Philippine Islands, at Manila, P. I., this 20th day of September, A. D. 1907.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk Supreme Court of the Philippine Islands.

21 [Endorsed:] File No. 20,766. Supreme Court U. S. October Term, 1908. Term No. 110. Eleanor Erica Strong *et vir. vs.* Francisco Gutierrez Repide. Certified copies of papers on appeal. Filed Jan'y 15th, 1909.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1908.

No. 110.

ELEANOR ERICA STRONG ET AL., PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

FRANCISCO GUTIERREZ REPIDE.

In Error to the Supreme Court of the Philippine Islands.

On Appeal from the Supreme Court of the Philippine Islands.

Brief in Behalf of the Plaintiffs in Error and Appellants.

I.

Statement of the Case.

This cause was instituted January 12, 1904, in the Court of First Instance of the City of Manila, Philippine Islands, by the plaintiffs in error and appellants, Eleanor Erica Strong, formerly E. or Erica Andrews, and Richard P. Strong, her husband, as plaintiffs, against the defendant in error, and defendant, by a complaint, the material allegations of which are as follows:

On or before October 10, 1903, the plaintiff Eleanor was the owner of eight hundred shares of the capital

stock of the Philippine Sugar Estates Development Company, Limited, of the par value of one hundred dollars, Mexican currency, per share, the actual value of the same being wholly unknown to the plaintiffs; and the defendant was the general manager of the said company. On the day and date mentioned, one F. Stuart Jones had the said eight hundred shares of stock in his possession, and believing, in good faith, that he had the right and authority so to do, but wholly without the knowledge, consent or authority of the plaintiff, transferred the same to the defendant for the sum of sixteen thousand dollars, Mexican currency, or at the rate of twenty dollars, Mexican, per share. The defendant at the time knew that the said shares were the property of the plaintiff Eleanor, and the plaintiffs have not since ratified or confirmed the said transaction but have disaffirmed the same.

The consideration paid the defendant for the shares, namely sixteen thousand dollars, was grossly inadequate, the shares being, at the time of the transfer, reasonably worth one hundred and twelve thousand dollars, Mexican, or at the rate of one hundred and forty dollars, Mexican, per share, which fact was well known to the defendant, but wholly unknown to the plaintiffs. The defendant deliberately, wilfully, knowingly, and with intent to deceive and defraud the plaintiffs, concealed from the plaintiffs the value of the shares and deprived the plaintiffs of means of ascertaining the value of the same, for the purpose of securing possession thereof at a grossly inadequate price, and thereby perpetrated upon the plaintiffs a gross fraud.

By reason of the premises, the defendant did not acquire a title to the shares, and plaintiffs are entitled to recover possession of the same; or, if defendant did acquire title to the shares by the transaction aforesaid, the plaintiffs have the right to rescind and cancel the agreement by which the transfer was made and to require the defendant to return the shares to the plaintiffs.

The plaintiffs have demanded of the defendant the return of the shares and tendered him the amount paid by him to Jones for the same, but the defendant refused to return the shares; and the same are transferable by delivery.

The plaintiffs, accordingly, pray (1) for an injunction restraining the defendant from disposing of the shares; (2) for a receiver to take charge of the shares pending the cause; (3) for a judgment declaring the shares the property of the plaintiff Eleanor, and ordering the same to be returned to her; and (4) for general relief (Rec., pp. 2–4).

The original complaint did not contain the allegation that, if the defendant acquired title to the shares by the transaction in question, the plaintiffs had the right to rescind and cancel the agreement by which the transfer was made, and to require the defendant to return the shares to the plaintiffs; which allegation was added, by amendment, April 14, 1904 (Rec., p. 4, fol. 5).

The original complaint, without this allegation, the defendant answered February 25, 1904, stating, in his answer, among other things, as follows:

> "That, at the time stated in the complaint, the plaintiff, Eleanor Erica Strong, was the owner of 800 shares of stock therein referred to of the par value of $100.00, Mexican currency, per share and that this defendant knew or believed the said shares to be at such time the property of the plaintiff; that at the time, the F. Stuart Jones referred to in said complaint had such shares of stock in his possession, and that he had at the time full right and authority from the said plaintiff to transfer the said shares and that the same were transferable by delivery . . .
>
> "That on or about the tenth of October, 1903, the said plaintiff, Eleanor Erica Strong, and her

duly authorized attorney in fact, the said F. Stuart Jones, for her and in her name, place and stead transferred, sold and delivered the said 800 shares of stock payable to bearer and transferable by delivery, with the intervention and by means of their regularly appointed and duly authorized commercial broker in the City of Manila, to one Kaufman, who afterwards sold and conveyed the same to this defendant."

The answer of the defendant to the complaint, as amended, filed April 14, 1904, the same day of the amendment, admits that he was, at the time stated, administrator (or general agent), of the association mentioned; that Jones had the 800 shares of stock in his possession, as alleged, believing that he had the right and authority to transfer the same; that the par value of the shares is one hundred dollars, Mexican, per share; that the shares are transferable by delivery; and that he has refused to return the same to the plaintiffs. The answer denies the remaining material allegations of the complaint, and concludes as follows:

"And further answering the said complaint this defendant says that on or about the tenth day of October, 1903, the said plaintiff, Eleanor Erica Strong, and her duly authorized attorney in fact, the F. Stuart Jones referred to in the complaint herein, for her, and in her name, place, and stead, transferred, sold, and delivered the said eight hundred shares of stock, payable to bearer and transferable by delivery, with the intervention and by means of their regularly appointed and duly authorized commercial broker in the city of Manila, to one Albert Kaufman, who afterwards sold and conveyed the same to this defendant, who, prior to the commencement of this suit, and prior to any demand made upon him by the plaintiffs herein, had sold, transferred, and delivered the said shares of stock to Luis Gutierrez, a citizen

and resident of Spain; wherefore, this defendant prays that he may go hence without day and recover his costs and damages herein sustained" (Rec., pp. 4–5).

After evidence taken, the trial court, on April 29, 1904, rendered judgment in favor of the plaintiffs for $138,-352.71, Philippine currency, with privilege to the defendant to satisfy the same by the delivery to the plaintiff Eleanor of the eight hundred shares of stock on her paying to the defendant sixteen thousand dollars, Mexican, or its equivalent in Philippine currency; and directed, in the event the judgment should not be satisfied within forty days, that the stock (which had been attached in the case) should be sold and the proceeds applied to the payment of the judgment (Rec., p. 11).

On May 3, 1904, the defendant excepted to the judgment and gave notice of his intention to perfect a bill of exceptions for a review by the Supreme Court of the Islands of all the rulings, orders, and judgment of the court in the cause. But, on the day before he had moved the court to set aside the judgment and to grant a new trial upon the grounds, first, that the evidence is insufficient to justify the decision of the court, and the findings are plainly and manifestly opposed to the weight of the evidence, and the court's decision is contrary to law; and, second, because of facts occurring during the trial of the cause and subsequent thereto materially affecting the substantial rights of the defendant, as set forth in an accompanying affidavit (Rec., p. 210, fols. 368–9. The date, May 3, Rec., p. 119, is an evident error, as the earlier date is certified by the court below in the bill of exceptions in that court).

The motion for a new trial was overruled May 9, 1904, to which action the defendant excepted (Rec., p. 127). The cause then came duly on for hearing in the Supreme Court of the Philippine Islands, and was there tried January 18, 1906; and on April 28, 1906, a decision was

rendered by a majority of the court, stating, among other things, as follows:

> "The plaintiff proceeds on two theories:
>
> "First. That her agent had no power to sell or deliver her stock in the Philippine Sugar Estates Development Company, Limited, and
>
> "Second. That its sale, through her agent, was procured by fraud on the part of the defendant" (Rec., p. 132, fol. 220).

And concluding as follows:

> "The decision of the Court of First Instance is sustained on the first ground stated, although not on the second, and the direction for judgment therein is hereby affirmed, and after a period of twenty days judgment will be entered in accordance with this decision" (Rec., pp. 131, 137, fol. 230).

On August 9, 1906, nearly four months after the last-mentioned action of the Supreme Court of the Islands, the defendant presented to that court a motion, previously filed (Rec., pp. 187–8), for a new trial based upon the alleged discovery of new and material evidence said by the court, *but not claimed by the motion*, to be of such character as probably to change the result, the same being alleged to consist of a certain power of attorney from the plaintiffs to the aforesaid Jones and one Wood, jointly and severally, upon which motion the court—

> "ordered that, when properly authenticated, such evidence be received, together with such further evidence as both parties may desire to produce in reference to the powers granted by the plaintiffs, or either of them, to Mr. F. Stuart Jones, and which may be pertinent to the case, all such evidence to be taken before a commissioner to be designated by the parties, by common consent, within a period of ten days, or, in default of such an agreement, to be named by this court, upon a date and at an hour to be determined by such commissioner, who shall return to this court the evidence so taken by him before the first of October, 1906" (Rec., p. 149).

On October 20, 1906, the parties represented to the court that the commissioner had not up to date fixed a day for presentation of evidence in accordance with the last mentioned decision of the court of August 9, 1906, and prayed the court to admit and consider directly an annexed copy of the alleged power of attorney mentioned, without the necessity of presenting the same before the commissioner, and without the necessity of hearing further evidence; and that the appointment of the commissioner be held to have terminated (Rec., p. 150, fol. 264). At the making of this representation and the presentation of the exhibit, the admission of the latter was objected to on behalf of the plaintiffs, on the ground that the same was irrelevant and immaterial, (*Ibid.*); and it was afterwards seasonably objected to as incompetent (Rec., p. 195, fol. 341).

Upon consideration of this representation, the court granted the prayer of the same, allowing to both parties ten days within which to present argument "in so far only as concerns the new evidence presented" (Rec., pp. 153–4).

Thereupon, on November 15, 1906, the Supreme Court, having considered the evidence and arguments of counsel (the new evidence consisting solely of the power of attorney aforesaid, Rec., p. 155, fol. 272), Johnson J., dissenting, held the newly discovered evidence decisive of the case; set aside the judgment theretofore made by that court; reversed the judgment of the Court of First Instance, and dismissed the action upon its merits; the opinion and order of the court concluding as follows:

> "After twenty days let judgment be entered in accordance with this decision, and ten days thereafter let the case be remanded to the court of its origin for the proper proceedings according to law" (Rec., p. 156, fol. 275).

The dissenting opinion of Johnson, J., is set forth in pages 157 to 169, and 197 to 209, of the Record.

Thereafter, on December 7, 1906, the Supreme Court made and passed the following order or judgment:

> "This court having acquired the proper jurisdiction to take cognizance of the above entitled cause, which has been submitted by both parties for decision, this court having considered the same upon the record herein, and decision and order for judgment having been recorded on the 15th day of November, 1906:
>
> "By virtue of said order, the order of this court to the effect that judgment be entered is hereby declared of no further effect, and the judgment of the lower court is hereby reversed, the defendant being declared not liable under the complaint, and the said cause is hereby dismissed finally, with the costs of the lower court against the plaintiff, this court making no special order as regards the costs incurred upon this appeal" (Rec., p. 169).

Thereupon, on December 12, 1906, the plaintiffs duly filed their bill of exceptions, which was approved and admitted by the court (Rec., p. 170, fol. 300), which bill of exceptions is set forth at page 170 to 211 of the record. To the final action and judgment of the Supreme Court of the Islands, the plaintiffs sued out their writ of error, and subsequently appealed therefrom, and the cause is in this court on both that writ and the appeal.

II.

Assignments of Error.

The court below erred as follows:

1. The motion for a new trial based upon the ground of newly discovered evidence should not have been considered by the court, or, if considered, should have been denied, for the reason that the same was made unsea-

sonably and too late, because made after the final determination and decision of the cause and the court's order affirming the judgment of the Court of First Instance therein, upon hearing of the defendant's bill of exceptions to the action of the said Court of First Instance (Rec., pp. 191–2, fol. 336), and when nothing remained to be done upon the said determination and decision of the cause except the clerical act of entering formal judgment upon, and in accordance with, such determination, decision, and order affirming the judgment aforesaid.

2. The court erred in entertaining the motion for a new trial upon evidence to be presented to itself, in the absence of a motion for a rehearing, after its determination, decision, and order of April 28, 1906 (Rec., p. 187, fol. 329; Rec., pp. 191–2, fol. 336).

3. The court erred in holding that the so-called newly discovered evidence was such in fact.

4. The court erred in holding that the so-called newly discovered evidence was such in law.

5. The court erred in holding that the so-called newly discovered evidence, being the power of attorney aforesaid, was relevant or admissible (Rec., p. 193, fol. 339), or competent (Rec., p. 195, fol. 341).

6. The court erred in holding the said power of attorney to authorize the sale by the persons therein named, or either of them, of the shares of stock in controversy, or that the same tended to prove any issue in the cause (Rec., 195, fol. 341).

7. The court erred in not holding as matter of law that, on the facts as established by the evidence (including that newly discovered, so-called), and conceded by all parties, the defendant was guilty of fraud in the acquisition of the shares of stock aforesaid.

8. The court erred in rendering or undertaking to render the judgment of December 7, 1906, for that, on May 2, 1904, after the rendition of the judgment of the Court of First Instance, the defendant made a motion for a new trial, upon grounds specified as aforesaid, and on the following day, and before any ruling had been made upon the said motion, the defendant excepted to the said judgment, and gave notice that he would present his bill of exceptions accordingly; whereby the defendant waived his said motion for a new trial, and the cause stood as though no such motion had been made, and the findings of fact by the said Court of First Instance became conclusive, and the Supreme Court had no authority either to review the said findings or the evidence on which the same were based, or to receive any evidence, new or additional, to the same (Rec., pp. 210, 211).

9. The said Supreme Court, sitting in bank in regular session, was without authority or jurisdiction to receive or hear any new or additional evidence, so called, as aforesaid.

10. The court erred in not affirming the judgment of the said Court of First Instance.

11. The court erred in reversing or undertaking to reverse the said judgment of the said Court of First Instance.

12. The court erred in setting aside, or in undertaking to set aside, its order for judgment, of April 28, 1906, sustaining and affirming the judgment of the Court of First Instance.

For convenience, the assignment of errors accompanying the appeal is here repeated, as follows:

(*a*) The court erred in finding that defendant violated no duty in not communicating to plaintiff his purpose in buying her shares, and has been guilty of no fraud.

(*b*) The court erred in entertaining the motion of the defendant for a new trial over the objection of said plaintiffs, said cause, at the time of filing said motion, having been fully determined by the Supreme Court.

(*c*) The court erred in granting a motion for a new trial, it affirmatively appearing by the affidavits in support of said motion that the power of attorney in question therein was, during the trial of the case in the court below, in the possession of the defendant, and that the defendant and his attorneys had full knowledge of the contents of said power of attorney and could have testified to the contents thereof.

(*d*) The court erred in admitting the power of attorney, which formed the basis of the motion for a new trial, in evidence against the objection of the plaintiffs, there being no express authority granted to the attorney named in said power of attorney to sell the shares in controversy in this action.

(*e*) The court erred in rendering its decision setting aside its former decision and reversing the judgment of the court of first instance.

(*f*) The court erred in rendering judgment against said plaintiffs and in favor of said defendant.

(*g*) The court erred in failing to affirm the judgment of the court below in favor of said plaintiffs and against said defendant.

III.

ARGUMENT.

A.

On The Facts.

The facts of the case, as appearing from the record, are as follows:

The plaintiff's are wife and husband, and for convenience, are hereinafter designated, respectively, as Mrs. Strong and Dr. Strong. Mrs. Strong is English (Rec., p.

61, fol. 102). While having a fair knowledge of Spanish, she has none in legal documents; has never understood legal documents at all; and never has understood business matters (Rec., pp. 14–15, fol. 23). She was formerly the wife of one Andrews, who was one of the incorporators of the Philippine Sugar Estates Development Company, Limited (Rec., pp. 64, 88, fols. 106, 145), and who died prior to April 18, 1901 (Rec., p. 64, fol. 106), on which day she was still the widow of Andrews and unmarried (Rec., p. 79, fol. 132). She subsequently married Dr. Strong, director of the Government Biological Laboratory at Manila (Rec., p. 6, fol. 8), who, like herself, was unversed in business affairs (Rec., p. 11, fol. 17; Rec., 61, fol. 102). On April 18, 1901, Mrs. Strong, then Mrs. Andrews, gave a power of attorney to one F. Stuart Jones for the limited purpose of demanding, recovering and receiving all sums and amounts of money, values or interests of whatsoever nature belonging or owing to her, and with power to take necessary steps and execute the necessary documents in that behalf (Rec., pp. 79–80).

In September and the early part of October, 1903, Mrs. Strong was the owner of eight hundred shares of stock of the Development Company, which were, at the time, in the possession of Jones, who had been looking after her affairs for her about three years prior to the day she testified, namely, April 18, 1904 (Rec., pp. 11–12, fol. 18); that is to say, since about the date of the power of attorney mentioned. The plaintiff's were married some time between April 18, and July 1, 1901, as, on the latter day, they appear to have signed, jointly as husband and wife, a second power of attorney to Jones and one Wood (Rec., p. 152), hereinafter more particularly to be referred to.

The Development Company had a board of directors composed of five stockholders, one of whom was president, another agent and administrator general, and the

others simply directors with the right to vote. The president and directors were elected every two years by secret vote in general meeting of the stockholders of the company, with the exception of the agent and administrator general, who was, however, subject to removal by a secret vote of, at least, three directors voting for his complete removal, which removal had to be confirmed or revoked by the first general meeting of stockholders taking place for that purpose (Rec., p. 88, fol. 145–6). The powers of the administrator general were "all the powers necessary for the most ample and independent administration under the immediate inspection of the president," and, besides the representation of the corporation, included the exclusive intervention in the management of the haciendas, rents, crops, purchases, and sales of product, lands, lessees, and tenants of the company (Rec., pp. 88–9, fols. 146–7). Andrews was the first agent and administrator general of the company, having been chosen to serve for the first five years of the existence of the corporation; that is to say, until the ordinary general stockholders' meeting to take place in August, 1905 (Rec., p. 88, fol. 146); and, subsequent to his death, and in August, 1901, the defendant succeeded him (Rec., p. 50, fol. 84), and continued to hold the office down to and after the institution of this suit, and held the same at the date of giving his testimony as a witness on April 19, 1904 (*ibid*).

The company was the owner of that part of the now historic Friar Lands in the Philippines, which had formerly belonged to the Dominicans (Rec., p. 35, fols. 57–8; p. 52, fol. 87). The ownership of these lands had long been a burden to the company. The vice-president being under examination as a witness, testified as follows:

> "The difficulties encountered by the company were these: They could not get possession of the lands, and the military would not pay the rent of

Mr. MARPLE: That is exclusive of the land taxes.

A. Yes, sir.

Q. And the tax is one per cent per year?

A. No; I believe two per cent; there are debts which do not appear there in this statement (referring to book which Mr. Sutro was examining).

Q. What?

A. Court costs, attorneys' fees, and claims of that kind.

Mr. KINNEY: How much would they amount to at the outside?

A. It may exceed 200,000 pesos; when dealing with attorneys, it is difficult to say how much it is going to cost you" (Rec., p. 70, fol. 118).

And the witness Jones, who sold the shares in controversy, testified as follows:

"Q. How did you come to make the sale; what reason influenced you in determining to advise with your friends as to the advisability of making the sale?

A. The fact that Mr. Sloan came to me and wanted to buy the stock, and my reason for selling was, that these shares had lain there for a number of years, that nothing had been done, and I had heard of a great many negotiations and talk of the sale, and nothing happened, and my idea was to realize for cash, and put it into something that would give a dividend" (Rec., p. 25, fol. 41).

For political reasons, the Government of the Philippine Islands wanted the Friar Lands, and wanted all or none (Rec., p. 36, fol. 60; p. 38, fol. 63).

Negotiations looking to the Government's acquisition of the lands covered many months, and were fluctuating and uncertain in character (Rec., pp. 32-3; Exh. B, Rec., p. 80).

On the part of the company the matter did not receive attention in meetings of the company or its officers,

the buildings, and when we went into court we did not seem to make any headway in establishing our claims in any direction; we were invariably beaten, and the lands were taxed and we had no money to meet these taxes, and we received no income hardly whatever from the land, or I may say no income to amount to anything, and the expenses were going on, and we were incurring debts" (Rec., p. 32, fol. 52).

And the defendant himself testified as follows:

"Supposing that the Government had given the haciendas the protection which they ought to have received, they would have been worth six million dollars gold; but considering the abnormal condition in which they were on account of the failure of the Government to protect these haciendas, it is impossible to fix any value; they were worth nothing, they were a charge" (Rec., p. 53, fol. 88).

And again:

"Q. What dividends, Mr. Gutierrez, has the Philippine Sugar Estates Development Company paid since its organization?

A. None at all; there had been deficits; the company lived on its credit.

Q. Had the company paid taxes during American occupation upon these lands?

A. No, sir; how was the company going to pay taxes; it did not have anything and could not pay. I told the treasurer to attach the lands.

Q. For how many years, in August, September, and October, 1903, did the company owe for taxation?

A. They owed it from the time the taxes were imposed; I don't know what year" (Rec., p. 68, fol. 114).

And still again:

"Q. What does the company owe today?

A. Fifty-seven thousand and some odd dollars, Mexican currency.

(Rec., pp. 33; 63, fol. 105), but the company was represented entirely by the defendant (Rec., pp. 29–30; fol. 49; p. 33, fol 55).

The negotiations took definite form in the offer of Governor Taft, Civil Governor of the Islands, who, on July 5, 1903, addressed to the Catholic Archbishop and Apostolic Delegate to the Islands a communication (Exh. B, Rec., p. 80), which was sent to the representatives of the various owners of the lands, including the defendant, who duly received the same (Rec., p. 52, fol. 86–7), and rejected it on his own responsibility in his capacity as a shareholder, and without notice to any of the other shareholders, except the directors (Rec., p. 59, fol. 99). Of all concerned, he was stiffest in his demands, and, before consenting to the sale, required some of the other companies than his to give a part of their purchase money to him (Rec., pp. 103–4), requiring, in fact, a concession to him of $335,000 from the other companies (Rec., p. 41, fol. 68), which he was careful to get the Government's obligation to pay (Rec., p. 113, fol. 188); and, as the trial judge aptly said, "he was the stumbling block in the negotiations almost from the first" (Rec., 110, fol. 182). By October 15th, a representative of one of the other companies was able to write to the chairman of his company at London that he "had hopes to bring something off at last; that [the defendant] showed signs of being willing to reduce his price;" and, at that time, the representatives of the other companies had agreed about the price (Rec., pp. 38–9, fol. 64). The negotiations for the sale were finally consummated at the end of December, 1903 (Rec., pp. 30, 31), and the defendant was duly authorized in formal meeting of his company to execute the necessary instruments in the premises (Rec., pp. 112–114).

The defendant, at no time, told either of the plaintiffs of the negotiations (Rec., pp. 17–18, fol. 28; Rec., p. 18, fol., 29).

In addition to being agent and administrator general of the company, the defendant was the owner in his own right (Rec., p. 57, fol. 96), not including the 800 shares in controversy (Rec., p. 69, fol. 115) of 30,400 shares of 42,030 outstanding shares of the company (Rec., p. 51, fols. 85–6; p. 107, fol. 178; p. 157, fol. 277), or largely more than two-thirds, and but little less than three-fourths of the entire stock of the company.

Article 27 of the articles of incorporation of the company (Rec., p. 95, fol. 158) allowed one vote for each fifty shares of stock deposited in the treasury of the company prior to a meeting; and, at the meeting which passed on the sale of the lands, there were cast, in all, 617 votes, of which the defendant cast 608 (Rec., p. 112, fol. 186), being within a small fraction of 98½ % of the whole, the shares in controversy not being represented (Rec., p. 69, fol. 115).

The defendant's course in obtaining the shares in controversy was as follows: One Kaufman, an employee of a firm in Manila, the members of which the defendant did not know, and in whose place of business he never was (Rec., p. 62, fol. 103), lived with the defendant in the front of his house (Rec., p. 70, fol. 117). The wives of the defendant and Kaufman were sisters (Rec., p. 53, fol. 89), and the relations of the defendant and Kaufman were such that, on occasions of the defendant's absence, Kaufman represented him and voted his stock at meetings of the Development Company (Rec., p. 62, fols. 103–4). The defendant employed Kaufman to procure the stock, and Kaufman, saying that he wanted the stock for a member of his wife's family, applied to one Sloan, who described himself as a general broker, to procure the stock (Rec., pp. 45–6, fols. 75, 76, 77–8). The office of Jones, who had the stock and who was last known by the defendant to have it in possession

(Rec., p. 53, fol. 89), was "right next door" to the defendant, and the office of Sloan very much farther off; and the defendant did not, in fact, know where the office of the latter was (Rec., p. 56, fol. 94). Upon being approached by Kaufman in relation to the stock, Sloan applied directly to Dr. Strong, and was told by the latter to see Jones for consultation and discussion in relation to the matter (Rec., pp. 6–7; 19, fol. 30; 45, fol. 76; 47, fol. 79). Sloan did not see or talk with either of the plaintiffs (Rec., p. 47, fols. 78–9), and first heard the defendant's name in the transaction from Kaufman after the sale of the stock (Rec., p. 46, fol. 77). The defendant, however, knew that Kaufman was buying the stock through Sloan, and gave Kaufman the check with which the purchase was closed. The negotiations ran through several weeks, during which successive offers of eight thousand dollars, fifteen thousand dollars, and sixteen thousand dollars, Mexican, were made for the stock (Rec., pp. 21–2; p. 46, fol. 76). When the price was finally agreed upon, the transaction was closed by Kaufman's giving Jones the check of Rueda Brothers, strangers to the transaction, for eighteen thousand dollars, and taking back from Jones his check for two thousand dollars (Rec., p. 29, fols. 47–8; p. 46, fols. 77–8). The check which the defendant gave Kaufman was for seventeen thousand, eight hundred dollars, Mexican, and was drawn to Rueda Brothers (Rec., p. 53, fol. 89), and, as already stated, the check which Kaufman gave to Jones was that of the Rueda Brothers for eighteen thousand dollars, Mexican.

That the defendant knew that it was the stock of Mrs. Strong that he was buying is beyond all doubt. Sloan knew the ownership of the stock, as he wrote directly to Dr. Strong about it (Rec., pp. 6–7–45), and Kaufman undoubtedly knew, as the transaction ran through several weeks during which the rising offers of

price were made (Rec., pp. 21–2; 46–76). The shares were delivered to Kaufman in Sloan's office by one Knowles, of Jones' office (Rec., p. 46, fol. 77), and the defendant knew that they came from Sloan and that Kaufman was negotiating through the latter (Rec., pp. 54–5, 90–1). The defendant knew that Jones had had part of the shares at the meeting of the company in 1902 (Rec., p. 53, fol. 89), and when he saw the shares on their delivery to him he knew that they were those which were, or had been, Mrs. Strong's (Rec., p. 54, fols. 90–1; p. 58, fol. 98; 69–70). In his answer in the contempt proceedings, he admitted his knowledge or belief that the shares were Mrs. Strong's (Rec., p. 115, fol. 191), and he did not present them to be voted at the meeting which finally ratified the sale of the company's lands (Rec., p. 69, fol. 115). While admitting that he knew that Jones had part of the shares at the meeting in 1902, the defendant pretended that he supposed from that fact that Mrs. Strong had lost the ownership of the shares, had transferred them (Rec., 53, fol. 89), though, in the same breath, he said that Wood had voted them in 1901 (*ibid.*), and he knew the practice of voting stock by representative, as Kaufman had voted his in 1902 and 1903 (Rec., p. 62, fol. 104). His statement that Jones voted any of the shares in 1902 was manifestly hearsay, as the defendant himself stated that, at the time of the meeting in that year, he was absent in America, and Kaufman voted his shares for him at the meeting that year (*ibid.*).

The withholding of the second power of attorney until after the decision of the Supreme Court of the Islands bears most significantly upon the question of the defendant's knowledge of the ownership of the shares. The trial court in terms held that the first power of attorney did not authorize Jones to sell the

shares (Rec., p. 107, fol. 178; p. 108, fol. 180). This was on April 29, 1904, (Rec., p. 111, fol. 185), yet it was not until after the decision of the Supreme Court, within one day of two years later (Rec., p. 131, fol. 219), that the second power of attorney was produced. The reasons for the suppression of this instrument undoubtedly were (1), because of doubt as to its sufficiency, in view of the provisions of the Civil Code (Rec., p. 132, fol. 220), to authorize Jones to sell the stock; and (2), because its production by the defendant, as proof of Jones' authority, would have revealed, beyond doubt, the defendant's knowledge that he was buying Mrs. Strong's shares. And the affidavits of the defendant's counsel in disclosing the second power of attorney are most instructive. Two of his counsel, namely, Eduardo Gutierrez and Rohde, declared (Rec., pp. 188, 190), that a few days prior to the trial of the suit in the Court of First Instance, the defendant stated positively that he had delivered the power of attorney to his attorneys, and that the two attorneys mentioned, together with their associate Marple, had, for a whole week immediately preceding the trial, made vain search for the instrument. Each of the attorneys, affiants, stated that the two had read in a newspaper on *April 29, 1906*, that the suit had been decided by the Supreme Court upon the sole question of "lack of any power or authorization on the part of Jones to sell the shares in question" (Rec., p. 189, fols. 331–2; p. 191, fol. 335); and each affiant stated that, at all times mentioned in their affidavits, which were made *April 30, 1906*, the defendant continued to insist that the instrument was among the papers delivered by him to his attorneys (Rec., p. 189, fol. 331; Rec., p. 191, fol. 334); and each stated further that, after reading the announcement of the decision of the Supreme Court, the affiants "determined to again make search for the power to which the defendant had continually referred;" and

each of the affidavits contains the following remarkable statement:

> "And it then struck them that it was very possible that the said power to which the defendant alluded might have been placed unwittingly in *a book*. As a result of this idea [the affiants], on the morning of this same day, began to search through all the books in the library of their office, numbering approximately some two thousand volumes, and *sure enough*, in the afternoon, they found, in a volume of the American & English Encyclopedia of Law containing the subject 'Contempt,' a copy of *a most ample power of attorney* to sell, granted by plaintiff to Jones, and distinct from the power filed in the record as the only one which had ever been granted, and same is annexed to this affidavit" (Rec., p. 189, fol. 332; 191, fol. 335).

And the affidavit of Gutierrez contains the following additional statement:

> "Deponent further states that on the morning of the 30th day of April, 1906, he compared the copy hereto annexed of the said power with its original *filed in the archives of the Insular Government*, and the same is a faithful and most exact copy."

And also the following remarkable explanation:

> "Deponent further states that the explanation of the finding of this power in the aforesaid place is to be found in one of the brusque detentions practiced by Judge Sweeney on the person of Don Franciso Gutierrez in the contempt proceedings taken against said Gutierrez in the course of this case, and in the fact that said power was left by an oversight in the volume consulted with reference to the contempt of which the defendant in this suit was accused" (Rec., pp. 189, 190).

It is further especially significant that there was no affidavit from Marple, who, in response to objection of counsel for the plaintiffs, that, if such a document as the instrument in question were in existence, it should be exhibited, and the witness under examination be given an opportunity to examine it, replied, "*I have* no such paper" (Rec., p. 60, fol. 100).

Very clearly, if Jones had given the instrument under consideration, or a copy of it, to the defendant so lately as the date of the transaction in question, Jones would have been asked concerning this fact, and it is incredible that he could have forgotten it; and it is evident that the defendant, or his counsel, got the paper filed with the affidavits of his counsel from the recorded copy, as Jones couldn't even remember the paper, and did not profess to be acting under it (Rec., p. 27, fols. 44–5). The conclusion is inevitable that the Supreme Court having, in its opinion, found no fraud on the part of the defendant, but, having decided against him on the ground of want of authority in Jones, the defendant's counsel took the desperate step of producing the power of attorney, even at the risk of encountering the obvious inconsistency of the claim that the defendant was relying on the instrument as evidence of Jones' authority with the whole scheme of the defense down to the decision of the Supreme Court, which was that the defendant did not know that he was buying Mrs. Strong's stock.

And further and equally convincing evidence of the fraud of the defendant in the premises is to be found in his pretense that the purchase of the stock was made for his brother.

In his original answer, filed February 25, 1904, he set up the ownership of the stock in himself (Rec., p. 128, fol. 214), and, in his amended answer, filed April 14, 1904, he set up a transfer of the stock to Kaufman and him-

self, and from himself to his brother before suit brought, without, however, saying or pretending that the stock was bought for his brother (Rec., p. 5, fol. 7). Moreover, he states that he was orally commissioned by his brother in November, 1902 (Rec., p. 54, fol. 91), in general terms, "to buy shares of companies which would *yield a profit*" (Rec., p. 58, fol. 96), and this in face of the plain fact that, as above shown, the Development Company was not a going enterprise, was paying no dividends, was deeply in debt, and was otherwise grievously burdened. And, although, as the defendant says, he had this commission from his brother in November, 1902, he admits that he made no effort to buy the shares until about a year later, and, upon being asked why this was, he replied: "Because I did not occupy myself with that matter until that time, and I did not think of it until that time;" and upon being asked, "What caused you to think of it at the time you did; what brought it to your attention at that time? " he answered: "*Nothing*" (Rec., p. 58, fol. 96). And his pretense that, immediately on obtaining the shares, he sent them to Spain (Rec., p. 53, fol. 89), through a priest, from whom he took no receipt, and whose whereabouts he did not know at the time of the trial (Rec., pp. 55–6), is too flimsy for comment.

In fact, this pretense that the defendant bought the stock for his brother was abandoned, and treated accordingly by all concerned. In its opinion on the first hearing, the court below said:

> "It is not entirely clear from the evidence whether the claim of the defendant that he bought the plaintiff's stock not in his own right but in behalf of his brother in Spain, to whom it was forwarded, has been abandoned or not. It appears to be assumed and was conceded by counsel on argument that the purchase was made for himself, and it has been so treated in this opinion" (Rec., p. 137, fol. 229).

The pretense, therefore, is now to be considered only in so far as it throws light upon the conduct of the defendant in the premises.

And, finally, the resort to a broker in the transaction carries its own comment.

By Article 545 of the Code of Commerce, it is provided, in relation to such property as the shares in question:

> "They are not subject to restitution if negotiated on exchange, with the intervention of a licensed agent, and where there is no such agent, with the intervention of a notary public or a person discharging his duties, or a commercial broker."

And, in his original answer (Rec., p. 128, fol. 214), and also in his amended answer (Rec., p. 5, fol. 7), the defendant set up and relied upon the intervention of a broker, as irrevocably fixing his right to the shares; and, while Jones was under examination, and was asked what effect, if any, it would have had upon the price at which he was willing to sell the shares, or his inclination to sell them at all, if he had known that the purchaser was the defendant, the defendant's counsel immediately made the pointedly significant objection—

> "that under the law Mr. Jones had no right to know from the broker who the purchaser was, and it was the duty of the broker, under the law, to keep the name of the purchaser secret, as provided for in the Code of Commerce" (Rec., p. 23, fol. 38).

And it is immaterial that the court below found that there was no proof that Sloan had ever held a commercial license (Rec., p. 135, fol. 225); the material point is that the defendant thought that Sloan's intervention would give him the protection incident to a transaction through such an official.

And, whatever may have been the authority of Jones or his action in the premises, Mrs. Strong, upon learning thereof, seasonably and effectively repudiated the transaction.

Jones did not turn over to Mrs. Strong the money received by him for the stock, but deposited it in bank to her account (Rec., p. 24, fol. 39), and, down to the time of the trial and the taking of testimony, Jones had never rendered her a statement of the transaction (Rec., p. 16, fol. 26–7; p. 28, fol. 46).

The plaintiffs first heard of the sale of the stock in the latter part of November or early in December, 1903 (Rec., pp. 7–8, fol. 12). On receiving the letter from Sloan, Dr. Strong, in addition to referring Sloan to Jones, in a conversation with the latter, within a week thereafter, told Jones of the letter, and said that Sloan would probably talk the matter over with him, Jones. Some time after this conversation, Jones, being at the house of the plaintiffs and in conversation with them, Dr. Strong referred to a statement he had seen in the Manila *Times* about the Government's intended purchase of the Friar Lands, and remarked that Mrs. Strong should realize a good deal on her shares; whereupon, to the surprise of the plaintiffs, they were told by Jones that he had sold the shares (Rec., p. 7, fol. 11). Two or three days later Dr. Strong asked Jones to find out who had purchased the stock and to consult a lawyer with reference to recovering it (Rec., p. 8, fol. 12), and asked Jones what steps could be taken in that behalf (Rec., p. 23, fol. 37). Mrs. Strong's statement is that, on learning of the sale, she said to her husband that something must be done and advised him "at once to take up the case, which he immediately did, and he went to see Sutro," one of the attorneys who brought the suit (Rec., p. 13, fol. 21). The plaintiffs first knew the defendant as the purchaser some

time early in January, and after the matter had been placed in the hands of counsel (Rec., p. 11, fol. 17); and Jones did not know the defendant as purchaser until after he had told Mrs. Strong of the sale, which he did about the first of December (Rec., p. 22, fol. 36–7). Jones would not have sold the shares had he known that the defendant was after them, because the defendant, being the representative of the Development Company, the mere fact of his wanting to buy the shares at the time would have shown that there was some increase in the value (Rec., p. 23, fol. 38). The suit was brought January 12, 1904 (Rec., p. 1, fol. 2), and it is alleged in the complaint and admitted in the answer that, before suit brought, demand was made of the defendant to return the shares and that he refused so to do (Rec., p. 3, fol. 4; p. 5, fol. 6).

The price paid Jones for the stock was grossly inadequate.

The price was $16,000, Mexican, or at the rate of $20, Mexican, per share. The offer in Governor Taft's letter of July 5, 1903, for the company's lands was $5,473,779.13, Mexican, or at the rate of $130.23½, Mexican, or $65.12, United States currency, per share. At the prevailing rate of exchange for Mexican at the time, this made the eight hundred shares worth about $160,000, Mexican, or ten times the price for which they were sold. The actual price paid the Development Company for its lands, added to the $335,000 concession, made the shares worth $95.32, United States currency, per share (Rec., p. 111, fol. 184), or within a fraction of 50 per cent more than according to the offer of July, and this is leaving out of account the value of the portion of the lands and property of the company reserved from the sale.

In view of the state of the negotiations at the time of the sale of Mrs. Strong's shares, namely, October 10, 1903

(Rec., p. 22, fol. 35), a conservative estimate of their value is $175,000, Mexican, or about eleven times the amount received for them by Jones.

B.

On the Law.

The errors assigned may conveniently be treated according to the following classification:

1. Error in entertaining, considering, and acting upon the motion for a new trial based upon the ground of newly discovered evidence (Assignments 1, 2, 9, 12).

2. Error in holding that the so-called newly discovered evidence was such either in fact or in law (Assignments 3, 4).

3. Error in holding the power of attorney submitted as newly discovered evidence to be competent, relevant, or admissible (Assignments 5, 6).

4. Error in not finding that, upon all the evidence, including that alleged to be newly discovered, the defendant was guilty of the fraud alleged (Assignment 7).

5. Error in reversing, and in not affirming, the judgment of the Court of First Instance (Assignments 10, 11).

6. Error in hearing and determining the cause upon the grounds, or any of them, specified in the defendant's motion for a new trial, and in considering at all the evidence in the case, except so far as it was necessary so to do to determine the questions of law involved (Assignment 8).

The errors assigned, as thus classified, are treated in their order as given.

1. The court below was without jurisdiction or authority to entertain the motion or petition for a new

trial based upon the alleged newly discovered evidence, or to act upon the same.

As in and by its terms appears, the said motion or petition purported to be based upon, and filed in accordance with, the provisions of paragraph 2 of article 497 of the Philippine Code of Civil Procedure (Rec., pp. 186–7, fol. 329).

The paragraph referred to is as follows:

> "If *before* the final determination of an action pending in the Supreme Court on bill of exceptions, new and material evidence be discovered by either party, which could not have been discovered before the trial in the court below, by the exercise of due diligence, and which is of such a character as probably to change the result, the Supreme Court may receive and consider such new evidence together with that adduced on the trial below, and may grant or refuse a new trial, or render such other judgment as ought in view of the whole case, to be rendered, upon such terms as it may deem just. The party seeking a new trial, or a reversal of the judgment on the ground of newly discovered evidence, may petition the Supreme Court for such new trial, and shall attach to the petition affidavits showing the facts entitling him to a new trial, and the newly discovered evidence. Upon the filing of such petition in the Supreme Court, the court shall, on notice to both parties, make such order as to taking further testimony by each party, upon the petition, either orally in court, or by depositions, upon notice, as it may deem just. The petition with the evidence shall be heard *at the same time as the bill of exceptions.*"

Very clearly, the provisions of this paragraph contemplate, and contemplate only, the presentation to the Supreme Court of the new and material evidence mentioned before the hearing by that court on the bill of exceptions.

This is manifest from the language of the section, which, in terms, accords the right of presenting the supposed new and material evidence while the action is "*pending . . . on bill of exceptions;*" provides that the evidence, together with the petition accompanying the same, "shall be heard *at the same time as the bill of exceptions;*" and distinctly provides that the court may receive and consider such evidence only before the final determination of the action by the court. Had a motion for a rehearing been made—which was not the case—before the court announced its determination, rendered its decision, and directed its judgment, there might be some slight merit in the contention that the attempt to present the so-called new evidence was seasonably made; but where, as here, the court had expressed its final determination, leaving to be done only the formal clerical act of entering the judgment directed by it, and no application for a rehearing was made, and all that was done was to present to the court a petition, contemplated and provided by law to be made and presented before the court's determination and seasonably to be heard by the court "at the same time as the bill of exceptions," it seems too plain to require argument that the court was asked, and undertook, to do a wholly unauthorized and vain thing. Wherefore, the action of the court in undertaking, or assuming, under the circumstances, to vacate its former determination and order for affirmance of the judgment in the Court of First Instance was, and is, void.

And every possibility of doubt on the point is excluded by the language with which section 497 of the Code opens. That language is as follows:

> "Sec. 497. *Hearings confined to matters of law, with certain exceptions.*—In hearings upon bills of exceptions, in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, nor re-try the

questions of fact, *except as in this section hereafter provided;* but shall determine only questions of law raised by the bill of exceptions."

Reading this language in connection with that of the succeeding paragraph 2 of the section, we have, then, this unmistakable mandate to the court: In hearing any cause you shall determine only questions of law raised by the bill of exceptions therein; provided, however, that if, before so hearing the same, new and material evidence, additional to that used in the court below, is brought before you, you may, at the same time that you hear the bill of exceptions, consider such new and material evidence, together with that heard by the court below; and this means not that you, or the parties before you, may choose the conditions and time of hearing and considering such new and material evidence; and it does not mean that a petition for hearing of the new evidence, "together with that adduced on the trial below," shall, after that adduced below has been heard, be substituted by a motion for a rehearing.

The errors imputed to the court below in its action in the premises must, therefore, be deemed well assigned.

2. The court erred in acting on the so-called newly-discovered testimony.

New trials upon the ground of after-discovered evidence are governed by section 145, subsection 2, and section 497, subsection 2, of the Philippine Code of Civil Procedure. The former section 145 is taken verbatim from section 657, subsection 4, of the Code of Civil Procedure of California, and the latter section 497 is substantially identical with said section 657 of the code of California. Therefore the decisions of the Supreme Court of California interpreting said section 657, subsection 4, and rendered prior to the adoption of the Philippine

Code of Civil Procedure, are binding upon the Philippine courts.

The So-called Newly-discovered Testimony is not Such in Fact.

If the affidavits upon which the motion was based are true (Rec., pp. 188–191), it appears that, on the day when the shares of stock in controversy were sold to the defendant, a full general power of attorney was delivered to the latter by Mr. Knowles, of the firm of Smith, Bell & Co., which authorized R. H. Wood and F. Stuart Jones jointly and severally to sell or otherwise dispose of the property of Mrs. Strong; that on or about the 10th day of January, 1904 (the day after the bringing of this suit), that power of attorney was delivered by the defendant to his attorney, with other documents; and that defendant repeatedly stated to his attorneys that the power of attorney had been delivered to them. Therefore, it can not be denied that the existence of this instrument was known to the defendant from the 10th day of October, 1903, when he bought the shares of stock, down to the date of the making of this motion, and to his attorneys from the 10th day of January, 1904, when it was delivered to them by the defendant himself. And yet, at no time during the trial of this case, did the defendant make any claim that he had such a document, or that such a document had been delivered to him; and, in fact, from his own testimony and from the statement of his attorneys the idea that such a document was or ever had been in his possession was negatived. On the 14th day of January, 1904, the defendant, by his attorneys, filed an answer in the contempt proceeding in this same cause (Rec., pp. 114–5), in which it was admitted that the defendant was aware at the time of this purchase that the shares were the property of Mrs. Strong.

The defendant himself, when called upon to explain

this admission by his attorney, attributed the same to a misunderstanding having arisen between himself and his attorney, owing to the fact that the one was ignorant of English and the other not proficient in Spanish; and the defendant, as well in this record as in the record of the contempt proceeding, denied absolutely that he had ever said that he knew the shares were Mrs. Strong's or that, as a matter of fact, he did know they were Mrs. Strong's at the time he bought them. He did admit that when he saw the shares themselves he knew that they were the same shares which had at one time been owned by Mrs. Strong, but said that he believed that they had been parted with by her sometime before his purchase (Rec., pp. 53–4).

In these affidavits it is also stated that the power of attorney by which Mrs. Strong authorized Mr. Jones to sell these shares was delivered by the defendant to his attorney or attorneys on the 10th day of January, 1904, and that the defendant has stoutly maintained ever since that he did so deliver it, and yet, on the 14th day of January, the defendant himself stated that he did not know, when he bought the shares, that they were the shares of Mrs. Strong, nor did he then, or at any other time, intimate that when the shares were bought by him the power of attorney, or a copy of it, was delivered to him.

The affidavits also state that *after* the attorneys for the defendant and the defendant himself had heard Mrs. Strong, her husband, and Mr. Jones testify that no such power had been given, he (the defendant) began to believe that he was mistaken in thinking that the power of attorney which is now produced had been given him. The testimony of Mrs. Strong, her husband, and Mr. Jones was not given until the 18th day of April, 1904 (Rec., p. 5, *et seq.*): the testimony of the defendant to the effect that he did not know he was buying these shares

from Mrs. Strong was given on the 14th day of January, 1904, just three months before Mrs. Strong, her husband, and Mr. Jones testified. Therefore, the defendant must have anticipated in January that in April these witnesses would testify that no power of attorney had been given him, and for that reason he hesitated to say that he had one, and flatly denied that he knew he was purchasing the shares from Mrs. Strong!

When Mr. Marple, the attorney for the defendant, was examining Dr. Strong, the husband, with reference to this other power of attorney, Mr. Sutro, one of the attorneys for the plaintiffs, made this objection: "I submit, if such a document is in existence, it should be exhibited to the witness and he be given an opportunity to examine it." Mr. Marple replied: "I have no such paper" (Rec., p. 60).

From the foregoing, and what is above stated on the subject of this power of attorney, in the argument on the facts, it is quite evident that if, as is stated in the affidavits, the power of attorney was delivered by Mr. Knowles to the defendant on the 10th of October, 1903, and by the latter to his attorneys on the 10th of January, 1904, the existence of the same was known to the defendant and to his attorneys at the very time the defendant was testifying that he did not know he was purchasing the stock of the plaintiff, Mrs. Strong, and his attorney was saying that he had no such paper.

It is stated also in the affidavits that the defendant was led to believe, by the statements of the witnesses, Mrs. Strong, Dr. Strong, and Mr. Jones, that he was mistaken in thinking that he could have received the power of attorney in question. An examination of the testimony of these witnesses will show, not only that it is not calculated to produce such an impression, but, on

the other hand, would naturally be more likely t
strengthen the recollection and opinion which the de
fendant said he had. Dr. Strong testified as follows:

> "My recollection is that Mr. Jones had som
> paper giving him authority to collect money fron
> shares and from houses, lands, etc. I do not know
> the exact contents of the paper" (Rec., p. 9).

And he testified as follows, when questioned by Mr
Marple:

> "Q. Dr. Strong, did you not, in 1901, join you
> wife in the execution of a written power of attor
> ney over her properties to Robert H. Wood an
> F. Stuart Jones?
> "A. I do not remember exactly. I have an in
> definite recollection of signing some paper of tha
> sort" (Rec., p. 60, fol. 100).

(It may be well to recall attention here to the fact tha
the power of attorney introduced in evidence by th
plaintiffs was executed prior to the marriage of plaintif
to Dr. Strong, and therefore could not have been th
paper about which Dr. Strong had a recollection.)

Again he says:

> "A. No; the only recollection is that I ma
> have seen one or two papers in connection wit
> my wife's name, in connection with various affair
> of hers, and I think I did sign some such pape
> (meaning the power to Mr. Wood and Mr. Jones)
> but really the recollection is indefinite" (Rec., pp
> 60–1).

The substance of Dr. Strong's testimony at the place
mentioned is that he had a recollection of having appeare
before Sr. Barrera and executed some document in favo
of Mr. Wood and Mr. Jones concerning his wife'
property.

The testimony of Mrs. Strong (Rec., pp. 12–13) shows that her recollection was that she signed a paper about three years before that time, at the request of Mr. Jones, and also a paper at the request of Mr. Wood.

The testimony of Jones (Rec., p. 20) clearly shows that he was under the impression that a joint and several power of attorney had been executed to him and Mr. Wood by Mrs. Strong. It does not, however, appear that this power of attorney was ever in the physical possession of Mr. Jones or that he ever saw the same. It was delivered to the agent of Mr. Gutierrez by Mr. Knowles, who, so far as the record shows, had the physical possession of the same. It is clear from the testimony that this power of attorney was executed by Mrs. Strong and her husband at Mr. Wood's request during the absence of Mr. Jones from Manila. At page 27 of the record Mr. Jones states on cross-examination by Mr. Marple:

> "A. Because he (Mr. Wood) had acted with me, and when she went away the last time I think there was a power of attorney made out signed by Mrs. Strong in our joint names; I got that in my head."

It can not be denied, first, that the power of attorney sought to be introduced as newly discovered evidence was a matter of public record in the archives of the Government at the time this suit was brought and tried; second, that the defendant knew of its existence on the 10th day of October, 1903, and thereafter, at the time of the trial; or, third, that it was placed in the possession of his attorneys on the 10th day of January, 1904, and was in their possession and in their office at the date and time of the trial, because the affidavits upon which the motion was based assert these three facts. Therefore, the defendant was not entitled to a new trial upon the ground of after-discovered evidence, as under no

circumstances is a new trial granted upon that ground when the evidence is known at the time of the trial to a party or to his attorneys or could have been discovered by the exercise of due diligence on their part.

This is not after-discovered evidence, as the affidavits themselves show that the evidence was known to and in the possession of the defendant and his attorneys for three months prior to the trial of the case.

If the defendant, when asked in the contempt proceedings if he knew that he was negotiating for and buying the stock of Mrs. Strong, had, instead of denying that he knew it as Mrs. Strong's stock, said that he knew it was her stock and given as his reason therefor that he had received, when buying the same, a power of attorney from Mrs. Strong authorizing the sale of it; and if defendant's attorney, when called upon by plaintiffs' attorney to produce the document, had, instead of saying, "I have no such paper," stated, "We had such a paper, but can not now find it," the defendant might have had some standing in court.

The consequences of this deception can not be avoided by undertaking to throw the responsibility upon plaintiffs' witnesses, first, because the testimony of plaintiffs' witnesses was not calculated to mislead the defendant, and, secondly, because the deception had been practiced by the defendant some three months prior to the testifying of the plaintiffs' witnesses.

The So-called Newly-discovered Testimony is Not Such in Law.

> "It is well settled that to entitle a party to a new trial on the ground of newly-discovered evidence it must appear: First—that he used reasonable diligence to discover and produce the evidence at the former trial, and that his failure to do so was in no degree the result of his own laches.

(Summary of affidavits.) This is not the sort of diligence required from suitors. It will not do for them simply to satisfy themselves as to an important fact in the case, and to assume it as a conceded fact, because they never heard it disputed. A party must be prepared to *prove* the material facts of his case, unless they are admitted. . . . If such excuses as these, for failure to produce at the trial proofs which were within the power of the party, be tolerated, there would be no reasonable limit to applications for new trials on similar grounds. We think no sufficient diligence was shown, and that the motion was properly denied for this reason."

Stoakes *vs.* Monroe, 36 Cal., 383.

A new trial will not be granted on the ground of newly discovered evidence if the affidavit on which it is claimed is shown to be exposed to the suspicion of bad faith.

Merk *vs.* Gelzhaeuser, 50 Cal., 631.

Instance of insufficient diligence.

Arnold *vs.* Skaggs, 35 Cal., 684.

"A party is bound to know the materiality of his evidence. . . . It is true that the defendant states that many of the facts set forth in his affidavit were unknown to him until after his trial; but this statement becomes absolutely unworthy of credence in view of the fact that in large part the contents of his affidavit are facts which must have been within his personal knowledge.

"But there is another reason why the application of the defendant for a new trial upon these grounds would have to be denied. The showing made by the affidavits presented here is wholly and entirely in conflict with the defense made at the trial and the defendant's own evidence. . . . He can not be permitted, when the issue has gone

against him, to thereafter come in, and, upon a motion for a new trial, suggest for the first time that there is other evidence material to his defense upon a new and different theory. . . . There would be no end of litigation."

People *vs.* Freeman, 92 Cal., 359.

"A new trial will not be granted upon evidence in conflict with that given at the trial."

People *vs.* Freeman, supra.
People *vs.* McCauley, 45 Cal., 146.
Bates *vs.* Bates, 71 Cal., 307.

"It appeared that the witnesses named in the affidavit were residents of San Francisco, and it does not appear that their testimony could not, with reasonable diligence, have been procured at the time of trial. If the defendant was prejudiced by the absence of their testimony, it was the result of their own laches and want of proper and ordinary care and diligence."

Jacks *vs.* Cooke, 6 Cal., 165.

"The evidence set out in the affidavit consisted of a deed, which had been recorded in the County Recorder's office more than twelve months prior to the trial, and the record of a judgment in the same court in which the cause was tried; and we are not able to perceive why this evidence could not as well have been discovered before the trial, by the exercise of the slightest degree of diligence."

Weimer *vs.* Lowery, 11 Cal., 104.
Klockenbaum *vs.* Pierson, 22 Cal., 164.

"It is well settled that a new trial will not be granted because new evidence has been found which was known to a witness at the trial of the case, and might have been obtained from him by

due attention." (Citing Bond *vs.* Cutler, 7 Mass., 205; McIntire *vs.* Young, 6 Blackf., 496.)

Moran *vs.* Abbey, 63 Cal., 56.

"The *evidence* and not merely its materiality must be newly discovered."

Berry *vs.* Metzler, 7 Cal., 418.

"The *evidence* and not merely the proper or best means of presenting it must be newly discovered."

Bagnall *vs.* Roach, 76 Cal., 106.

Lack of preparation, however excusable, is ground for a continuance and not for a new trial. If the party fail to move for adjournment in order to produce evidence that is within his knowledge, he waives his want of preparation and can not afterwards move for a new trial on this ground. "The subsequent allegation of a party that he was not prepared is no reason for granting a new trial, unless it be founded on the discovery of testimony of which the party *was not at the time apprised.*" (Judge Kent, in Alexander *vs.* Byron, 2 John. Cas., 318.)

Scanlan *vs.* Railway Co., 128 Cal., 586.
Turner *vs.* Morrison, 11 Cal., 21.
Butler *vs.* Estrella Co., 124 Cal., 239.

Application for new trial on the ground of newly discovered evidence is regarded with distrust and disfavor.

Harralson *vs.* Barrett, 99 Cal., 607.
People *vs.* Sutton, 73 Cal., 243.
Spottiswood *vs.* Weir, 80 Cal., 448.
People *vs.* Freeman, 92 Cal., 359.
Baker *vs.* Joseph, 16 Cal., 173.
Arnold *vs.* Skaggs, 35 Cal., 684.
Tibbett *vs.* Tom Sue, 125 Cal., 544.
People *vs.* Warren, 130 Cal., 683.

Due diligence must be shown, no matter how material or important the newly discovered evidence.

Harralson *vs.* Barrett, 99 Cal., 607.
People *vs.* Luchetti, 119 Cal., 501.

A new trial can not be granted for alleged newly discovered evidence when the *knowledge* of such evidence was in the possession of the moving party while the case was pending and he did not see fit to avail himself of the benefit of it.

Sonoma *vs.* Stofen, 125 Cal., 32.
People *vs.* Luchetti, 119 Cal., 501.
Butler *vs.* Estrella Co., 124 Cal., 239.

Where defendant knew of the materiality of testimony, took certain steps to find the witness, and went to trial without him, not moving for a continuance, they entered upon the trial at their peril. "This evidence was in no sense newly discovered."

Scanlan *vs.* Railway Co., 128 Cal., 586.

> "The additional evidence . . . must be newly discovered, by which expression is meant that it must have been discovered since the trial. If discovered before, or at, the trial, and no continuance of the trial was applied for, an answer to the motion that no diligence is shown will be sufficient to defeat it, no matter what else may be shown. . . . It is the evidence itself and not merely its materiality which must appear to have been newly discovered. Evidence can not be newly discovered, or perhaps it is more proper to say that a party is precluded from claiming it to be newly discovered, if it be a matter, either actually or presumptively, within his knowledge or in the knowledge of those . . . whose relations to him . . . were such that it amounts to a lack of diligence not to have

remembered or discovered and produced the evidence at the trial. Accordingly it was held that a new trial could not be granted for alleged newly discovered evidence when it appeared that the knowledge of such evidence was in the possession of the moving party while the case was pending and he did not see fit to avail himself of the benefit of it. (A party can not claim he was without previous knowledge of a conveyance to which he was a party, where he urges the new discovery of such conveyance as ground for new trial. Wildman *vs.* Wildman, 72 Conn., 262, 44 Atl., 224.) It was held that the arrival of a deposition during a trial without the knowledge of a party will not constitute the basis of a motion for a new trial on the ground of newly discovered evidence. ('It is evident that counsel at the trial were anticipating this deposition. Of course, there was notice of its taking, and either counsel could have been advised of its contents.' Tyler *vs.* North. Am. Co., 24 Wash., 252; 64 Pac., 162.) . . . The materiality of the new evidence can not be considered as an excuse for the lack of diligence. . . . If upon the showing made it remains doubtful whether the movant might not have known of and have produced the evidence at the former trial, but for his negligence, a new trial will be refused (Chapin *vs.* Goodell, 2 Colo., 608, 611)."

Spelling, New Trial & Appellate Practice, sec. 209.

"It is the clear duty of parties to a litigation to acquaint themselves with that which is, or may be, the common knowledge of every individual, whether or not directly interested, where it affects the question to be litigated. And it was held a new trial should not be granted on the ground of newly discovered evidence which was alleged to be a deed recorded in the county recorder's office a year before the trial (Weinier *vs.* Lowery, 11 Cal., 104) . . . On like principle, it is also their right and duty, in case of loss of documentary

evidence which is important and material, to come prepared not only to prove such loss as a proper foundation, but to produce secondary evidence to prove the facts which could otherwise be proven by such written instruments. Accordingly it was held that the discovery after verdict of the loss of letters containing relevant evidence, no reason being shown for not producing them, or laying a proper foundation and introducing secondary evidence of their contents, at the trial, did not warrant a new trial (Wimpy *vs.* Gaskill, 79 Ga. 620, 7 S. E. 156; *Quigley* vs. *Birdseye*, 11 Mont., 439, 28 Pac. 741.) (See, especially, foot-note 41, on p. 358 of Spelling.)"

Spelling, New Trial and Appellate Practice, sec. 213.

If evidence is known to party, a motion for continuance in order to produce it may constitute an essential element in the showing of diligence.

Spelling, New Trial and Appellate Practice, sec. 216.

The testimony upon which a new trial is asked must have been discovered since the trial.

Encyc. Pl. & Pr. 14, 796.
Palmer *vs.* Fiske, Fed. Cas. 10691.
State *vs.* Adams, 39 La. Ann., 238.

Nor is evidence newly discovered which at the time of the trial was known to a party, but not to his attorney, or vice versa.

Isaacs *vs.* People, 118 Ill., 538.
Russell *vs.* Oliver, 78 Tex., 11.
14 Encyc. Pl. & Pr., 797.

A party fails to exercise due diligence if he fails to introduce secondary evidence of an instrument known to be lost.

14 Encyc. Pl. & Pr., 798.

"A new trial will not be granted to a party on the ground of newly discovered evidence consisting of a lost document which such party knew at the time of the trial to be in existence, and the contents of which, upon proof of loss, he could have proved by parol."

Chapman *vs.* Moore, 107 Ind., 223, 8 N. E., 80.

A new trial will not be granted if the newly discovered evidence is a matter of record, as it could have been discovered by reasonable diligence. Records are always accessible to both parties, and diligence requires that they be examined and procured in time for the trial. Especially is this rule applicable when it does not appear that the movant was ignorant of the existence of the record in question.

Johnson *vs.* Flint, 75 Tex., 397.
Galvin *vs.* St. Paul, 62 Minn., 145.
Shiels *vs.* Lamar, 58 Ga., 590.
14 Encyc. Pl. & Pr., 802.
Fuller *vs.* Harris, 29 Fed., 814.

On motion for a new trial, the testimony was offered of a person who was present at the transaction relied upon as a defense. The accused must have been aware of this at the trial, and if, as he now says, he did not then know the name of the witness, he should have asked a continuance. The evidence is not *newly discovered.*

State *vs.* Adams, 39 La. Ann., 238.

"The credulity of the courts can not be strained to the point of believing that such evidence was discovered only since the trial."

State *vs.* Gauthreaux, 38 La. Ann., 611.

Where an attorney believed he had a copy of a special

law, but could not find it when he went to trial, he should have moved for a continuance.

> "It is too late, after taking the chances of a trial, to urge such a cause as a ground to reopen the controversy."
>
> Kilgore *vs.* Jordan, 17 Tex., 346.

The affidavit for new trial stated that the existence of an instrument was unknown to plaintiff at the time of the trial, and that plaintiff had searched the records and failed to find it.

> "It appears to have been regularly recorded, and, if so, the exercise of ordinary diligence would have discovered its existence."
>
> Johnson *vs.* Flint, 75 Tex., p. 379.

The new evidence was discovered within a week of the adverse verdict.

> "It is expressly shown that he discovered this testimony by his diligence, and not by accident, voluntary disclosure, or other fortuitous circumstance after all diligence on his part had been exhausted. It is very clear to our minds that he was stimulated by the verdict to a point of effort which he ought to have reached, but did not, before the trial. In such cases new trials will not be awarded to let in the newly discovered evidence."
>
> Railway Co. *vs.* Phillips (Ala.), 13 So. Rep., 65.
>
> Macy *vs.* De Wolf, Fed. Cas., 8933.
>
> Knoblauch *vs.* Kronschnabel, 18 Minn., 300.

The discovery must have been *after* the trial.

Rhodes *vs.* Beaman, 10 La., 363.

Cozart *vs.* Lisle, 19 Tenn., 65.

Brainard *vs.* Morse, 47 Vt., 320.

It is not sufficient that the evidence was unknown to counsel or unknown to party at time of trial; it must have been unknown to both.

Fikes *vs.* Bentley, Fed. Cas. 4785a.
Morgan *vs.* Bell, 21 Pac., 255.
Broat *vs.* Moor, 44 Minn., 468.
Thistler *vs.* Miller, 36 Pac., 1060.

Where evidence was known at time of trial and not immediately available or withheld, failure to ask a continuance in order to produce it shows negligence, which will defeat a motion for a new trial.

Taylor *vs.* Mueller, 30 Minn., 343.
Wiggin *vs.* Coffin, Fed. Cas., 17624.
Ames *vs.* Howard, Fed. Cas., 326.
Chandler *vs.* Thompson, 30 Fed., 38.
Ward *vs.* Hackett, 30 Minn., 150.

"There was nothing to show that the plaintiff did not know at the time of the trial . . . of the existence of the alleged newly discovered evidence. Certainly, if the plaintiff knew of it, the fact that his attorney did not is not enough to justify a new trial. If it be left even doubtful that the party knew of the evidence, he will not succeed. A strict adherence to this rule is necessary to prevent imposition upon the court."

Gilfillan, C. J., in Broat *vs.* Moor, 44 Minn., 468.
Pahnvitz *vs.* Fassman, 2 La. An., 625.
Nininger *vs.* Knox, 8 Minn., 140.
Champion *vs.* Ulmer, 70 Ill., 322.

"Sound policy requires that when parties have had a reasonable opportunity to get their proofs and have them heard and passed upon, there should be an end to litigation; any other rule would be intolerable."

Brainard *vs.* Morse, 47 Vt., 320.

Newly discovered evidence consisting of documents lost or mislaid at time of trial.

> "The affidavit, however, shows that the appellant knew of the existence of the order, and knew, also, of its loss prior to the trial, but made no effort to prove its contents by parol. We do not think a party has a right to thus remain silent until after the trial, and then for the first time ask the benefit of a document known to him to be in existence, and of the contents of which, upon proof of loss, he might have given parol evidence."
>
> Chapman *vs.* Moore, 107 Ind., 223, 8 N. E., 80.

> "They could have shown the destruction or loss of the deed, and their diligence in attempting to find it if it were lost, and then proved, or at least endeavored to prove, the contents of the deed by secondary evidence. If they had attempted to make such proof, and unavoidably failed, and, in addition thereto, if they had, at the trial, made any claim of rights under the Illinois ditch title, or sought to establish any, we should regard with more favor their claim of newly discovered evidence. On the trial they had evidence of their alleged rights under the Illinois ditch title. They had evidence of the loss of the deed, and they had the grantees present in court to prove, or attempt to prove, the contents. They made no such effort. The deed now would prove no more than the secondary evidence of its contents would have proved on the trial. We are of opinion that no meritorious showing of newly discovered evidence is made."
>
> Quigley *vs.* Birdseye, 28 Pac., 741.

> "It is alleged in the motion for a new trial . . . that upon the filing of the information upon which the prosecution is based the defendant sought many times for this receipt, all his searches proving unsuccessful; that he did not make this de-

> fense at the time of the trial because he had nothing to prove the existence of such contract with Nonato, nor did he at the time know of the whereabouts of Nonato. . . . The application is insufficient in not showing the use of diligence in procuring the testimony. It is stated that the defendant had made many searches for the receipt of November 5, 1901, taken from Nonato upon the delivery of the jewelry by him to Nonato. If after due search made for the document it could not be found, parol evidence of its contents would have been admissible. It is not stated in the application for a new trial that this proof could not have been made."
>
> U. S. *vs.* Zamora, 2 P. I., 585, 587.

The court below, instead of contenting itself with the expression of a "grave doubt . . . as to the diligence of the defendant in the matter" (Rec., p. 149), should have held, in accordance with the facts, that the defendant had wholly failed to show such diligence, or that the evidence offered was not such as "*could not have been discovered* before the trial in the court below by the exercise of due diligence" (Code, sec. 497, par. 2): the incontrovertible fact, according to the affidavits in support of the motion, being that the evidence not only could so have been discovered, but also was, in fact, known to, and in possession of, the defendant and claimed to have been lost, with no effort to supply its place by secondary evidence.

To hold, under such circumstances, evidence to be newly discovered is not only to accept what is palpably against the truth, but, also, to put a premium on trickery and fraud upon both court and parties.

And what is believed to be the latest utterance of the court below on this subject, in its decision in Banal *vs.* Safont, 5 Off. Gaz. P. I., 474, is in exact support of the

contention here made. The syllabus of that case, which accurately accords with the decision, is as follows:

> "In order that the Supreme Court, before whom an appeal is pending, may receive and properly consider new and material evidence, it is indispensable that the evidence be really new and such that by the exercise of due diligence it could not have been discovered before the trial.
>
> A party having in his possession books and documents relating to a litigation which has been going on against him for several years, and in which he has taken a direct part, can not subsequently allege ignorance as to the existence and importance of said books and documents, nor plead his inability to discover them before the trial below, notwithstanding the fact that due diligence was used.
>
> "The granting of a new trial for the purpose of receiving certain evidence which could not be produced while the case was pending in the court below does not depend upon the consent of the litigants, nor is it within the discretion of the judge, because it can only be granted whenever the express conditions prescribed by law have been complied with. If otherwise granted it would be improper and prejudicial to the adverse party."

In that case, accordingly, the court refused to hear the alleged new evidence, and ordered the appeal to proceed upon the bill of exceptions without reference thereto.

3. The court erred in holding the power of attorney submitted as newly discovered evidence to be competent, relevant, or admissible.

The material provisions of the civil code in force in the Philippines at the time of the transaction under inquiry are as follow:

> "ART. 1710. An agency may be express or implied.

An express agency may be given by a public or private instrument and even by parol.

. . . . . .

"ART. 1712. Agency is general and special.

The former includes all the business of the principal.

The latter, one or more specific transactions.

"ART. 1713. An agency stated in general terms only includes acts of administration.

In order to compromise, alienate, mortgage, or to execute any other act of strict ownership an express commission is required.

. . . . . .

"ART. 1714. An agent can not exceed the scope of his authority.

"ART. 1719. In complying with the agency, the agent shall follow the instructions of the principal.

. . . . . .

"ART. 1732. Agency is terminated—

1. By revocation.

. . . . . .

"ART. 1733. The principal may, at his will, revoke the power and compel the agent to return the instrument containing the same in which the authority was given."

The first power of attorney given in evidence, that of April 18, 1901 (Ex. A, Rec., p. 79), was found by the court below in its first opinion insufficient to authorize the donee, Jones, to sell the stock in controversy.

The material terms of the second power of attorney, that of July 1, 1901 (Rec., p. 152), are the following:

"That she hereby grants to Messrs. Robert H. Wood and Francis Stuart Jones, both merchants, of legal age and residents of this city, such ample and sufficient powers as may be requisite and necessary to enable them, in the name of and as representing the grantor, and in the exercise of

the rights and actions of the latter, or either of them, jointly or severally, to execute and perform *the following acts.*

"To administer, manage, and control all the property and revenues of the grantor, of whatsoever nature and character they may be, collecting and taking over the rents, fruits, and products of the same; selling them for the prices and under the conditions which they may deem proper; collecting the amounts realized from a sale of the same, either in one payment or by instalments; executing all such public and private documents as may be necessary; mortgaging and otherwise encumbering said property under such conditions as they may see fit; endeavoring to bring about a transfer, either in the name of the grantor or in that of her said attorneys in fact, of the shares now standing in the name of the late Mr. Richard H. Andrews, to which end they may do and perform all acts that may be necessary; effecting the transfer of the shares in the companies known as The Manila Trading Company and The Oriente Hotel and that of the right possessed by her deceased husband, Mr. Richard H. Andrews, to a certain sum of money known under the name of the 'Settlement,' which the grantor has hitherto bound herself to transfer to Mr. Henry J. Andrews by deed executed before the present notary on March 12th of this present year, to which end they will authorize all such transfers as may be necessary to execute and complete the transfer of the aforesaid shares; collecting and receiving all and any sums of money which the grantor may be entitled to receive from any person, corporation or firm by virtue of any titles, shares, or rights whatsoever; giving all proper receipts, acquittances, and other documents, and doing and performing all acts and things which the grantor might do or perform if personally present.

"And, therefore, *for all of the aforesaid purposes,* and for everything incidental thereto, she

> hereby confers upon the said Messrs. Wood and Jones the fullest and most effective powers which may be necessary in the premises, freely and without any limitation whatsoever."

It has been seen that according to the provisions of the civil code (art. 1712), a general agency includes "all the business of the principal;" a special agency includes "one or more specific transactions."

In the outset it is to be observed that the power of attorney in question undertakes to be specific and to enumerate the things authorized to be done by the donees, including in the enumeration things which without specific mention would be included in the creation of a general agency, as, for instance, securing the transfer of shares in certain companies specifically named and of a right to a certain specific sum of money. This of itself differentiates the agency created by the power from a general, and makes it a special agency, and, accordingly, in order to find that it conferred upon the donees the power claimed by the defendant, it is necessary to find within its terms "an express commission" to sell the stock in controversy, which confessedly is not to be found, but is held by the court below to be included within the doubtful language of the instrument with reference to disposition, hypothecation, and incumbrance.

The suggestion of the court below (Rec., p. 156, fol. 274), that the conduct of the parties, principal and agent, gave to the instrument in question the construction contended for by the defendant, may be dismissed with the briefest consideration. The short answer to it is that, as the evidence abundantly establishes, neither principal nor agent had the instrument in contemplation at the time of the transaction, and the agent was dealing with the stock in controversy in the light of his general relation to the principal, a woman unacquainted

with business, and who, as the agent himself declared, took no part in the management of her affairs, in respect of which he came to represent her "through being an old friend of hers," and without compensation (Rec., p. 21, fol. 34). And the agent, in making the transaction, regarded his power so to do as not dependent upon any express authority, but considered it implied from his relations to his principal (Rec., p. 27, fols. 44–5).

Nor is there any greater force in the court's rejection of the application of the maxim "*expressio unius est exclusio alterius*" (Rec., p. 156, fol. 274), in construing the instrument. The statement that the stock specified differed from other investments is gratuitous, as the record is wholly silent on the subject; and even did the stocks specified differ in any wise from any other investments supposed to be in contemplation in the granting of the power, it remains that a general agency would apply to and cover the transactions respecting them.

But consideration of the nature or scope of the power in question is wholly immaterial in view of the situation presented by the record.

According to the law at the time of the transaction in controversy, as above set forth (ante, pp. 48–9), in complying with his agency, whatever its nature or scope, it was the duty of Jones to follow the instructions of Mrs. Strong as his principal, and Mrs. Strong had the right, at her will, to revoke the agency and to compel Jones to return to her any instrument supposed to create the same.

Both Mrs. Strong and her husband, while in London, had talked with Wood about the Development Company and Mrs. Strong's shares (Rec., p. 10, fol. 15; Rec., p. 15, fol. 24), and Mrs. Strong told Jones that Wood had advised her not to sell the shares unless she got their face value (Rec., p. 12, fol. 19); and she told Jones in a

conversation one night on the Luneta, in Manila, not to part with the shares until she got face value (Rec., p. 13, fols. 20–1). Mrs. Strong says she remembers distinctly telling Jones this (*ibid.*) some time after July 14, 1903 (Rec., p. 14, fol. 22), and, though Jones testified that he had no instructions from Mrs. Strong to that effect (Rec., p. 26, fol. 43), yet the court below, in each of its opinions (Rec., p. 132, fol. 221; Rec., p. 156, fol. 274), *found as a fact* that the conversation testified to by Mrs. Strong did take place.

This is in exact conformity to the rule recognized by this court:

> "One of the errors assigned and insisted on grows out of this conflict in the testimony between the plaintiff and the two defendants, all of whom were sworn. The former denies the receipt of any such papers, and both the latter swear positively to their delivery to plaintiff.
>
> "On this subject the court charged the jury that 'it is a rule of presumptions that ordinarily a witness who testifies to an affirmative is to be preferred to one who testifies to a negative, because he who testifies to a negative may have forgotten. It is possible to forget a thing that did happen. It is not possible to remember a thing that never existed.'
>
> "We are of opinion that the charge was a sound exposition of a recognized rule of evidence, of frequent application, and that the reason of the rule, as stated in the charge, dispenses with the need of further comment on it here."
>
> Stitt *vs.* Huidekoper, 17 Wall., 385, 394.

And it is evident from the court's treatment of the matter that the conversation was insisted and relied upon by the defendant as having taken place, and as being evidence of a recognition by Mrs. Strong of the existence in Jones of the agency upon which the defendant now relies.

The fact as thus found is not open to question by the defendant, and assuming the existence of the agency as contended for by the defendant, it involves a plain instruction binding on the agent in complying with his agency. Moreover, assuming an agency previously created, the instruction of Mrs. Strong thus found as a fact plainly involves a revocation of the agency *pro tanto;* or, if the statement embodied in the instruction be deemed itself the creation of an agency, it is well said by the court below:

> "If in its negative form, it is sufficient to constitute an express or special power to sell, it can not be severed from the limitation as to the price bound up in the same sentence with it. The limitation is as much a parcel of the grant as if both had been found in one written instrument, and one part can not be given effect without the other, unless one part only was brought to the knowledge of the defendant" (Rec., p. 132, fol. 221).

And even the defendant himself did not at any time claim that he ever heard of the conversation under consideration (*ibid.*), or that at any time prior to the transaction he was shown or knew of any instrument purporting to create an agency in Jones; and the plain fact, apparent throughout the record, is that the defendant dealt with Jones, not in the light of any particular authorization to the latter, but in view of his, Jones', known relation to Mrs. Strong as having general charge of her affairs. This, of itself, put the defendant upon inquiry as to the authority of Jones; and, had he done what was thereby required of him under the circumstances, he could not have contented himself with asking Jones his authority, but he would have had to go to Mrs. Strong herself, from whom he would have learned of the conversation and the instruction therein conveyed.

Therefore, (1) there being no pretense that, at the

time of the transaction in controversy, any power of attorney or other form of written authority to Jones was shown or known to the defendant; (2) if the defendant had been shown or had known of any such power or authority, he being chargeable with the obligation to inquire into and ascertain its extent before having any transaction with the agent purporting to be had in pursuance thereof; (3) the defendant being chargeable with knowledge of the law requiring the agent, in complying with his agency, to follow the instructions of his principal, and, accordingly, bound at his peril to learn whether the agent was under any such instructions in the premises, and, upon inquiry, having been certain to find that the agent was limited to the sale of the shares in controversy to receiving not less than par therefor; and (4) the defendant having dealt with the alleged agent merely upon the strength of the latter's having general charge of the affairs of his alleged principal, in respect of dealing with which the defendant was chargeable with knowledge of the law that the alleged agent could execute no act of strict ownership in respect of any property of his alleged principal without an express commission: it conclusively follows that it is wholly immaterial whether the second power of attorney existed, and that, even if the same had been offered in evidence on the trial, instead of under the conditions under which it was offered, it should have been rejected as inadmissible; and, accordingly, it could not at any time have been considered as in any respect competent or relevant as tending to prove the conditions upon or under which the defendant actually dealt with the alleged agent in the premises.

And the power of attorney under consideration was wholly immaterial in view of the further fact that, as above stated (ante, pp. 25–6), Mrs. Strong seasonably and effectively repudiated the transaction.

By article 1727 of the Civil Code, it is provided as follows:

> "A principal is liable, in so far as the agent has exceeded his power, only when he ratifies the same, expressly or in an implied manner."

As has been seen (ante, p. 25), Jones did not turn over to Mrs. Strong the money received by him for the stock, but deposited it in bank to her account, and, down to the time of the trial and the taking of testimony, he had never rendered her a statement of the transaction; and, as soon as she learned of the transaction, which she did incidentally through a conversation, she promptly repudiated it, and, within a reasonable period, took steps to have it vacated. As at this time it was possible for the defendant to be put in as good a position as before the transaction, and an actual offer in that behalf was made by Mrs. Strong, accompanied by a tender of the amount which the defendant had paid, the latter can not be heard to complain that he could not have been placed in such position; wherefore, the repudiation by Mrs. Strong of the act of her agent was, upon every principle, effective as nullifying the same.

And, finally, the power of attorney under discussion should not have been received or considered by the court, because of the fraud of the defendant in procuring the transaction, even though—which is contrary to the fact—he had known of, and relied upon, the power in his dealing with Jones.

This fraud, in its character, extent and effect, is considered under the next assignment of error, now to be considered.

4. The court belowed erred in not finding that, upon all the evidence, even including the power of attorney just considered, the defendant was guilty of the fraud alleged.

It is provided by the Civil Code as follows:

> "ART. 1265. Consent given by error, under violence, by intimidation, or deceit shall be void.
>
> "ART. 1269. There is deceit when by words or insidious machinations on the part of one of the contracting parties, the other is induced to execute a contract which, without them, he would not have made."

And insidious machinations include "false promises, the exaggeration of hopes or benefits, the abuse of confidence, the use of pretended names, qualities or powers, the thousand forms, in fine, of deceit, by which one may be misled and a vitiated consent obtained, without its being necessary that such proceedings constitute 'estafa,' or otherwise fall within the domain of the Penal Code."

Manresa, vol. 8, p. 623, cited in the dissenting opinion upon the first hearing in the court below (Rec., p. 141, fol. 235).

As above pointed out (ante, p. 13), at the time of the transaction in question, the defendant was administrator general of the Development Company. His powers were "all the powers necessary for the most ample and independent administration under the immediate inspection of the president," and, besides representation of the corporation, included the exclusive intervention in the management of the haciendas, rents, crops, purchases and sales of product, lands, lessees, and tenants of the company; and, in addition to being agent and administrator general of the company, the defendant was the owner in his own right of nearly three-fourths of the entire stock of the company, having a voting power of within a small fraction of 98½ per cent of the entire stock outstanding at the meeting which passed on the sale of the company's lands (ante, p. 17). The ownership of these lands had long been a burden to the company, which never paid any dividends, lived on its credit, let

its taxes fall in arrear, and was otherwise heavily in debt (ante, pp. 13–15); and the discouragement of the shareholders in the premises was intensified by the conduct of the defendant throughout the negotiations, which fixed, if it did not create, in the minds of the shareholders a feeling of hopelessness, if not despair, of ever realizing anything out of the properties upon which alone depended the value of their holdings.

In dealing with the Government in relation to the lands, the defendant, without assembling the shareholders or directors in meeting, and without notice to any of the shareholders except such as happened to be directors, on his own responsibility, *in his capacity as a shareholder*, rejected the Government's offer of July 5, 1903; and afterwards, when in August, 1903, the Civil Governor intimated that all of the Friar Lands might be bought by the Government if the owners would make a 40 per cent reduction of their original demands, the defendant still held out (Rec., pp. 36–40).

Moreover, article 20 of the articles of incorporation of the company required a resolution of a general meeting of the shareholders for the purpose of mortgaging or selling more than one hacienda (Rec., p. 94, fol. 157), and the offer of July 5, 1903 (which was for all of the company's properties), communicated to the defendant, should by him have been submitted to the shareholders in meeting, notwithstanding that, through his ownership of so large a majority of the shares, he could have dominated such meeting and controlled its action; and it is no answer to this to say that the offer would have been rejected by the vote of the defendant alone, for not only might his views have been overcome by the arguments of the minority, but, also, it was his duty, first, as administrator general, and next as managing shareholder, to have informed the shareholders, including Mrs. Strong, of the offer, and thereby of

the value of their shares. By his action in the premises, the defendant assumed toward the other shareholders the position of a trustee for them and their interests; and it is undisputed that he, at no time, either through the medium of a shareholder's meeting, or any otherwise, informed either of the plaintiffs of the negotiations in relation to the sale of the lands (ante, p. 16); and when finally the defendant called the shareholders in meeting to pass upon the question, he had already exacted the concession of $335,000 from the other owners, and had made it a condition of the sale of the company's lands that substantial reservations thereof should be made. Properly enough, he was characterized by Governor Wright in his deposition as "very much stiffer in his demands than any of the others" (Rec., p. 103, fol. 172), and by the trial judge in his opinion as "the stumbling block in the negotiations almost from the first" (Rec., p. 110, fol. 182). And it is manifest throughout that his attitude in the entire negotiations, and his relation thereto, made him not only master of the situation as to the acquirement by the Government of any part of the Friar Lands, but, also, managing and trustee shareholder for all the shareholders of the Development Company.

And, in addition to his cunning concealment of his relation to the purchase of the shares in controversy—which concealment of itself procured the "vitiated consent" of Jones to the sale (Rec., p. 23, fol. 38; ante, p. 26)—the defendant's course in obtaining the shares in controversy at the shockingly inadequate price paid for them, as above set forth (ante, pp. 17–19), is convincing that he went about acquiring the same through insidious machinations, bringing his conduct within the strictest possible conception of deceit in that form as mentioned in the Civil Code, and constituting the grossest and most shameless form of fraud known to any jurisprudence. In view of the plain circumstances of the case on this

point, as above fully and accurately set forth in the argument on the facts (ante, p. 17 et seq.), it would be an abuse of the court's intelligence and a trespass upon its patience further to dwell upon a proposition so clear upon even the most unreflecting reading of the record.

Nor is it necessary to deal at any length with the contention so earnestly made below, and doubtless to be repeated here, that the defendant's office as director and administrator general of the company brought him into no relation of trust to the shareholders as such: it is sufficient to direct the court's attention to the fact that, apart from his official positions in the company, he was the majority shareholder, having in hand negotiations the fate of which rested exclusively with him, and in respect of which, by his own admission, he was dealing, not as an officer of the company, but as its majority shareholder. This relation, apart from the common obligations of honesty and fair dealing, put him in such a position of trust towards his fellow shareholders that he could not lawfully or honorably buy from any such shareholder his stock without first disclosing to such shareholder all the information in his possession relative to the value of the stock, and particularly all such information acquired by him through his negotiations in relation to the company's affairs, professedly and admittedly carried on by him in his capacity as shareholder.

The principles governing one in such a situation as was the defendant are clearly recognized and aptly applied in the following, among other, cases:

Oliver *vs.* Oliver, 118 Ga., 362; 43 S. E. Rep., 232.
Stewart *vs.* Harris, 69 Kans., 498; 77 Pac. Rep., 277.
Miner *vs.* Belle Isle Co., 93 Mich., 97; 17 L. R. A., 412.
Ervin *vs.* Oregon, etc., Co., 27 Fed. Rep., 625, 631.
Wheeler *vs.* Abilene, etc., Co., 159 Fed. Rep., 391.

Sidell *vs.* Mo. Pac. Ry., 78 Fed. Rep., 424.

Ritchie *vs.* McMullen, 79 Fed. Rep., 522.

Farmers' Loan & Trust Co. *vs.* New York, etc., Co., 150 N. Y., 410.

Hunter *vs.* Hunter, 50 Mo., 229.

Stone *vs.* Moody, 84 Pac. Rep., 617; 5 L. R. A. (N. S.), 799.

1 Bigelow on Fraud, pp. 231, 297, 312.

The rule of the Civil Law is thus stated:

"He who has undertaken the affair of another person without his knowledge is obliged to take the same care of it as if he were constituted the other's agent or factor; for he is instead of one; and, seeing he does a good office, he ought to do it so as that it be noways prejudicial, either through his negligence or through any other fault. Thus, he shall be accountable, not only for any fraud or unfair dealing which he may be guilty of, but likewise for want of care. And even although he should be negligent in his own proper concerns, yet he is bound to take a very exact care of the affairs of another person which he has undertaken, and he will be answerable for the faults that are contrary to this care."

Domat's Civil Law, vol. 1, p. 574, No. 1457.

"He who has had the enjoyment of the common thing ought to communicate all the fruits and all the profits which he has made by it. For, without this communication, the equality which ought to be observed among all the copartners would be violated."

Id., p. 584, No. 1490.

"By fraud is meant all surprise, trick, cunning, dissembling, and other unfair way that is used to cheat anyone."

Id., p. 510, No. 1259.

"The ways of cheating being infinite, it is not possible to reduce into a rule what fraud is

sufficient to annul a covenant, or to give occasion for recovering damages and what are the cunning artifices which the law connives at. . . . Thus, in all cases where the question is to know if there be any fraud, it depends on the prudence of the judge to find it out, and to punish it, according to the quality of the fact and circumstances. And as we ought not, on the one hand, easily to annul covenants, for everything that may not be within the bounds of a perfect sincerity; so, on the other, we ought not to suffer simplicity and modesty to become a prey to double-dealing and knavery."

Id., No. 1260.

"Personal fraud, which is that treated of under this title, implies a design of one of the contractors to cheat the other, and the actual accomplishment of the cheat."

Id., p. 511, No. 1262.

And under the Spanish law fraud is cheating. The essential element is deceit, and the fraud is the injury accomplished by means of the deceit.

"De manera que el engano puede considerarse como el medio de arribar al fraude, y el fraude como el fin u objeto que uno se propone lograr con el engano."

Escriche, Fraude.

("So that cheating may be considered as the means of accomplishing the fraud, and the fraud is the end or object which one proposes to accomplish by the cheating.")

"**Engano**—La falta de verdad en lo que se dice o se hace con animo de prejudicar a otro."

Id., citing Title 16, part 7.

("Cheating—The failing of truth in what is said or done with the intention of prejudicing another.")

"Engano malo es toda astucia o maquinacion que uno emplea contra nuestros legitimos derechos, ya hablando u obrando con mentira o artificio, ya callando maliciosamente lo que se debia manifestar" (Id.).

("Vicious cheating is every device or machination that one employs against our lawful rights, whether by word or act, with falsehood or artifice, or by maliciously not telling that which ought to be made known.")

The trial judge, in his opinion, thus effectively states the case:

"The defendant concealed from the plaintiff facts which he was legally bound to reveal. By the by-laws of the Philippine Sugar Estates Development Company, Article 20, it appears that to sell or mortgage more than one hacienda the consent of the shareholders at a general or extraordinary meeting is required. The negotiations with the Government were for the purpose of selling the entire property of the company, composed of eight haciendas. The defendant states that he carried on the negotiations as a shareholder. Apart from his position as administrator-general, he therefore assumed to act as agent of the shareholders in the negotiations, and subsequently could not deny as to his principals the obligations arising from such a position. It is true that it is held that the ordinary position of director or president of a corporation does not constitute such a fiduciary relation towards the shareholders as to prevent the purchase of shares by the president or director without first revealing all that is known concerning the company. But the defendant stood in a very different capacity. Knowing that by his immense holdings of stock in the company he could dictate its policy, he assumed the position to the other stockholders as agent in the sale of these lands. Owning the majority of the stock, and so controlling the corporation,

he felt there was no need of calling together the stockholders, as he knew that he could vote down any proposal against his wish or force through anything he desired. In such a capacity he could not purchase shares from the stockholders without revealing to them whatever information he had secured by virtue of his negotiations as their agent. He assumed a position of trust, and certainly as to those for whom he acted, he can not deny the duties which it involved when holding such a position. He had sound reasons to believe at the time he purchased these shares from the plaintiff, that if he agreed to sell the property of this company, the whole sale of the friar lands could be consummated. He was the stumbling block in the negotiations almost from the first, and on October 10th, he knew full well that, being the majority shareholder in the Sugar Estates Company, his consent to the sale of these lands would practically mean that each share would be worth very nearly twice the par value. Knowing this, he fraudulently withheld his information as to the status of the negotiations from the plaintiff, and in a roundabout way purchased these shares at a price of $20, Mexican currency, per share. Instead of going to Mr. Jones' office, which was next door to his own, as any man with honest and honorable intent would do, he employed Mr. Kaufman to go to Mr. Sloan, a broker, and to negotiate through Mr. Sloan for the purchase of these shares at a shockingly inadequate price. Further, instead of giving his own check, he conceals his identity, by giving a check of Rueda Hermanos for the purchase of these shares, and then paid Mr. Kaufman $18,000 Mexican currency for his part in the transaction. Then, although the head officers of the company were in this city, although the defendant himself owned 30,400 shares of this company, although the shares were bearer's shares and could be voted by him at the meeting, although he claims they were his brother's shares and that there was such a feeling of con-

fidence between him and his brother that whatever was his was regarded as his brother's and whatever was his brother's was regarded as his, and although it would be important to have all the shares of the company in Manila upon the completion of the contract for the sale of all the property of the company and the dissolution of the company, he sends these shares, so he states, to Spain, and in this way puts them outside the jurisdiction of the court. These actions certainly indicate strongly that the defendant was fully aware that he was committing a fraud on the plaintiff" (Rec., pp. 109–110, fols. 181, 183).

5. That the court erred in reversing and in not affirming the judgment of the court of first instance is a necessary corollary of the errors already considered. Not only was the original determination of the court below correct, as above indicated, but also its subsequent action in considering the so-called newly discovered evidence and undertaking to reverse the judgment of the trial court was unauthorized and erroneous. The last judgment or decree of the court below should, therefore, be reversed and the case remanded for further proceedings accordingly.

6. The last suggestion of error presents a question of practice, the proper solution of which, it is believed, would have required the court below on the first hearing to affirm the judgment of the trial court, upon the ground that the court below should not have considered the evidence in the case, except so far as it was necessary so to do to determine the questions of law involved. As has been seen (ante, pp. 29–30), section 497 of the Philippine Code of Civil Procedure restricts the Supreme Court to the determination of questions of law,

except in certain specified cases. Among these is that mentioned in paragraph 3 of the section, as follows:

> "If the excepting party filed a motion in the court of first instance for a new trial, upon the ground that the findings of fact were plainly and manifestly against the weight of evidence, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts, and render such final judgment as justice and equity require."

As has been seen (ante, p. 5), the defendant moved the trial court to set aside the judgment and to grant a new trial, in substantial compliance with the provisions of paragraph 3 of the section of the Code just quoted, but, on the next day, he excepted to the judgment and gave notice for a review by the Supreme Court of all the rulings, orders, and judgment of the trial court.

It is contended that, by filing the later motion, the defendant waived the earlier one, and that, on the hearing, the Supreme Court should have considered only the exceptions stated (Rec., pp. 120–124), and only so much of the testimony as enlightened the same. This was not done, and it would seem an unavoidable result that the judgment of the trial court must be deemed to stand unaffected by any subsequent proceedings in the cause, and now to be beyond the possibility of being affected or in any other wise dealt with than by way of execution.

And the error under consideration has an important bearing upon the question of the right of the court to have considered the so-called newly discovered evidence. The plaintiffs presented the matter clearly to the court

below by setting forth the fact of the presentation of the two motions in the order named, and saying:

> "Whereby said defendant waived said motion for a new trial, the notice of filing a bill of exceptions being inconsistent with the motion for a new trial, and said cause stood as though no motion for a new trial had been made; and the findings of fact made by the Court of First Instance became conclusive, and no authority exists to receive any new or additional evidence or to review the evidence taken in said cause in said Court of First Instance; which reason for affirming the judgment of the Court of First Instance is now for the first time presented to the Supreme Court upon making application to settle the exceptions, the Supreme Court at the time sitting in bank in regular session" (Rec., pp. 210–211).

Manifestly, the newly discovered evidence, so-called, could not have been considered by the court below in passing upon any of the defendant's exceptions taken in the trial court, for the obvious reason that the testimony was not before the latter court; and equally manifestly, if the court below could not consider the case on the evidence taken in the trial court, it could not consider any evidence supposed to be additional or supplemental thereto, and therewith to be considered.

Respectfully submitted.

HENRY E. DAVIS,
For Plaintiffs in Error
and Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 110.

ELEANOR ERICA STRONG AND RICHARD P. STRONG, HER HUSBAND, PLAINTIFFS IN ERROR,

vs.

FRANCISCO GUTIERREZ RÉPIDE, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This action was brought in the Court of First Instance of the City of Manila to recover possession of eight hundred shares of the capital stock of the Philippine Sugar Estates Development Company, Limited.

This stock was on the 10th day of October, 1903, and for a long time prior thereto, the property of one of the plaintiffs, Eleanor Erica Strong, and was on the date named sold and transferred by the agent of said plaintiff, one Jones, who had, and had had, for several years, this stock in his possession.

The stock appears to have been sold directly to one Kaufman, who immediately transferred it to the defendant Répide, who was the managing agent of the company and a majority stockholder.

The complainants aver first, that the stock was sold by her agent without authority or power and without her knowledge; and, second, that the said sale was procured by fraud on the part of the defendant.

The defendant denies both of these averments, contending that the sale was made by the duly authorized agent of the complainant, who was also a director of the company, with a full knowledge of the value of the stock and of conditions that surrounded the company, and that the price paid was, at the time of the sale, a fair price according to existing conditions, and that there was no deception, concealment or fraud connected with the sale.

In support of the issues thus raised testimony was taken, and the decision of the court rendered by Justic Winthrop on April 29, 1904, found for the complainants on both propositions (Record, p. 105).

A motion for a new trial, based on the ground, among others, that the findings of fact were plainly and manifestly against the weight of the evidence, was made (Rec., p. 119) and overruled (Rec., p. 124), and the case thereupon taken on exceptions to the Supreme Court of the Philippine Islands.

After hearing, the decision of the Supreme Court, delivered by Tracey, Justice (Rec., p. 131), sustained the court below on the question of the absence of authority on the part of the agent to sell, but held that there was no fraud, misrepresentation or wrongdoing on the part of the defendant which would affect the validity of said sale.

Two of the judges of the court filed a dissenting opinion, holding that there was no right of action in favor of the complainants, and that the sale of the stock was a valid sale.

The opinion of the court was rendered on the 28th day of April, 1906.

On the 9th day of August, 1906 (Rec., p. 148), the same being a day within the July, 1906, term of said court, the defendant petitioned for a new trial on the ground of

new and material evidence discovered by him, which could not have been discovered at the trial below by the exercise of due diligence, and which was of a character to probably change the result. To this petition affidavits were annexed, and after consideration by the court the prayer of the petition was granted (Rec., p. 149).

This evidence was in the nature of a power of attorney made and executed by the complainants, whereby one Robert H. Wood and Francis Stuart Jones, the Jones being the one heretofore mentioned as the agent of the complainants, were empowered, jointly and severally, to act as in said power provided, and among the powers granted was the power to sell and transfer the stock herein referred to.

Although permission was given to both sides to introduce oral testimony none was presented, and on November 15, 1906, the court set aside the judgment made by the Supreme Court as hereinbefore stated, and reversed the judgment of the lower court, and dismissed the suit with costs against the complainants, and judgment entered accordingly (Rec., p. 154).

Whereupon and on the 18th day of December, 1906, the cause was brought to this court on writ of error (Rec., p. 211).

ARGUMENT.

I.

From the nature of the cause of action, the character of the pleadings and relief prayed for, the fact that the proof was taken and the hearing had before the court without the intervention of a jury, it would seem that it is, in all essential qualities and even in form, a suit in equity, and, therefore, could come only to this court by appeal and not by writ of error.

Walker *vs.* Dreville, 79 U. S., 440.

Sarchett *vs.* United States, 12 Peters, 143.

Wiscart *vs.* D'Auchy, 3 Dallas, 321.

On this point many other decisions of this court, in line with those above referred to, might be cited, but the question seems so well settled that a multiplication of cases is unnecessary.

II.

While in the printed record mention is made of an assignment of errors (Rec., p. 211), no such assignment is in fact contained, and while we have not seen the brief of counsel for plaintiffs in error, we were by him furnished with the following as intended to be used in the argument of this cause:

"The court below erred as follows:

"1. The motion for a new trial based upon the ground of newly-discovered evidence should not have been considered by the court, or, if considered, should have been denied, for the reason that the same was made unseasonably and too late, because made after the final determination and decision of the cause, and the court's order affirming the judgment of the Court of First Instance therein, upon hearing of the defendant's bill of exceptions to the action of the said Court of First Instance (Rec., 191-2, fol. 336), and when nothing remained to be done upon the said determination and decision of the cause except the clerical act of entering formal judgment upon, and in accordance with, such determination, decision and order affirming the judgment aforesaid.

"2. The court erred in holding that the so-called newly-discovered evidence was such in fact.

"3. The court erred in holding that the so-called newly-discovered evidence was such in law.

"4. The court erred in holding that the so-called newly-discovered evidence, being the power of attorney aforesaid, was relevant or admissible (Rec., 193, fol. 339).

"5. The court erred in holding the said power of attorney to authorize the sale by the persons therein named, or either of them, of the shares of stock in controversy, or that the same tended to prove any issue in the cause (Rec., 195, fol. 341).

"6. The court erred in not holding as matter of law that, on the facts as established by the evidence, including that of

the newly discovered, so-called, and conceded by all parties, the defendant was guilty of fraud in the acquisition of the shares of stock aforesaid.

"7. The court erred in rendering, or undertaking to render, the judgment of December 7, 1906, for that, on May 2, 1904, after the rendition of the judgment of the Court of First Instance, the defendant made a motion for a new trial upon grounds specified as aforesaid, and, on the following day, and before any ruling had been made upon the said motion, the defendant excepted to the said judgment and gave notice that he would present his bill of exceptions accordingly; whereby the defendant waived his said motion for a new trial, and the cause stood as though no such motion had been made and the findings of fact by the said Court of First Instance became conclusive, and the Supreme Court had no authority either to review the said findings or the evidence on which the same were based, or to receive any evidence new or additional to the same (Rec., 210, 211).

"8. The said Supreme Court, sitting in bank in regular session, was without authority or jurisdiction to receive or hear any new or additional evidence, so-called, as aforesaid.

"9. The court erred in not affirming the judgment of the said Court of First Instance.

"10. The court erred in reversing, or undertaking to reverse, the said judgment of the said Court of First Instance."

Subsequently, and on January 19, 1909, counsel received a printed copy of appeal papers, permitted by order of this court, made and entered on January 18, 1909, to be filed in this cause.

From these it appears that on September 10, 1907, an appeal was prayed by the plaintiffs in this cause, and that the same was allowed on the 14th day of said month.

Included in said appeal papers is to be also found an assignment of errors, pages 1 and 2.

Why this appeal, allowed on the 14th day of September, 1907, was not filed until January 15, 1909, counsel for defendant are uninformed.

If the court determine that these appeal papers are not to be considered a part of the record, it would seem that

this cause should be dismissed on the ground that it has not been properly brought up for review.

If this contention is correct, or if the cause is to be considered on appeal, then, and in either event, taking the two assignments of error referred to as an indication of the line of argument to be pursued by the plaintiff in error, we will consider:

First. The questions raised as to the power and jurisdiction of the Supreme Court of the Philippine Islands to entertain a motion for a new trial and to grant the same, and the other questions of local practice and discretionary nature, and

Secondly. The merits of the case as raised by the record, and which are:

A.

Had the agent of the plaintiff in error, Mrs. Strong, at the time of making the sale the power and authority to sell or deliver her stock in the Philippine Sugar Estates Development Company, Limited? and

B.

Was that sale procured by fraud on the part of the defendant?

First.

This motion for a new trial, addressed to the appellate court, and made while the cause was pending therein, is permitted under subsection 2 of article 497 of the Code of Civil Procedure, which reads as follows:

"II. If, before the final determination of an action pending in the Supreme Court on bill of exceptions, new and material evidence be discovered by either party, which could not have been discovered before the trial in the court below, by the exercise of due diligence, and which is of such char-

acter as probably to change the result, the Supreme Court may receive and consider such new evidence, together with that adduced at the trial below, and may grant or refuse a new trial, or render such other judgment as ought, in view of the whole case, to be rendered, upon such terms as it may deem just. The parties seeking a new trial, or a reversal of the judgment on the ground of newly discovered evidence, may petition the Supreme Court for such new trial, and shall attach to the petition affidavits showing the facts entitling him to a new trial and the newly discovered evidence. Upon the filing of such petition in the Supreme Court, the court shall, on notice to both parties, make such order as to taking further testimony by each party, upon the petition, either orally in court or by depositions, upon notice, as it may deem just. The petition, with the evidence, shall be heard at the same time as the bill of exceptions."

Section 10 of the act approved July 1, 1902, gives to the Supreme Court of the United States jurisdiction to review, revise, reverse, modify or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in proper cases, as therein enumerated, "in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the Circuit Courts of the United States."

U. S. Statutes 32, p. 695.

This court has repeatedly held that it will not revise the opinions of the Circuit Court either granting or rejecting a motion for a new trial.

Blunt *vs.* Smith, 7 Wheaton, 248.

A motion for a new trial is always addressed to the discretion of the court, and the Supreme Court will not control the exercise of that discretion by an inferior tribunal.

Insurance Company *vs.* Wilson, 8 Peters, 291.

The granting and refusing of new trials, and most incidental orders, made in the progress of a cause, are in the discretion of the court of original jurisdiction.

Wright *vs.* Hollingsworth, 1 Peters, 165.

This court has no jurisdiction to revise the action of an inferior court upon the question of either granting or refusing a new trial.

Kerr *vs.* Clampitt, 95 U. S., 188.

The granting or overruling of a motion for a new trial in the courts of the United States, rests wholly in the discretion of the court to which the motion is addressed.

This is so well settled that it is unnecessary to remark further upon the subject.

Insurance Company *vs.* Barton, 80 U. S., 603.

A.

But if the action of the Philippine court in the matter of granting the new trial here questioned could be reviewed, we contend that the action of the court was not only in conformity with practice and permissible, but made necessary in order to secure the proper administration of justice according to the record in this cause.

At the taking of testimony Mrs. Strong, her husband and their agent, Jones, were closely questioned as to the existence of the power of attorney authorizing the sale of this stock.

The testimony of Mrs. Strong will be found in the record (pages 13, 16, and 17). Her recollection is indistinct and her statements contradictory and evasive. At one point she has some recollection of signing; at another none; she knows nothing of the contents of the paper she may have signed because it was in Spanish, and later on it is shown that she was well acquainted with the Spanish language and transacted much of her business through that medium; she says that Mr. Jones, at one place, made no sales of stock; later on she admits that he sold stock in several other concerns under a general power.

Mr. Strong's testimony is very much of the same character (Rec., pp. 9 and 10).

Mr. Jones is also undecided in his knowledge (Rec., pp. 20 and 21), but thinks that only one power of attorney was given, and that the general power offered in evidence. He was specifically asked as to a joint power of attorney given by Dr. and Mrs. Strong to himself and Mr. Wood (Rec., p 27), and both Mr. Jones and the Strongs were asked as to the giving of the power of attorney before a justice of the peace in 1901, but no definite information could be obtained regarding it.

When the motion for a new trial, on the ground of after-discovered evidence, was made, that motion was accompanied by affidavits, one of which was from W. J. Rohde, attorney for the defendant in Manila (Rec., p. 190), and this affidavit explains the misplacement of the document; of the reasons that governed the action of attorneys at the trial below and of its ultimate discovery, and fully meets the objections raised in the third assignment of errors contained in the appeal papers filed.

The order of the court permitting the power of attorney on which the new trial was asked to be received, and allowing to each party the right to produce further evidence in reference to said power to be taken before a commission to be designated by the parties or the court (Rec., p. 149), all in conformity with subsection 2 of article 497, Civil Code of Procedure before referred to, and the decision of the court granting the motion to admit and consider said new evidence made jointly by the parties plaintiff and defendant (Rec., p. 150), and the opinion of the court admitting said evidence and reversing the judgment of the lower court and directing final judgment (Rec., pp. 155, 156), are referred to in answer to the claims by the plaintiff of alleged error and want of power and jurisdiction in the Philippine court to admit and consider said additional or after-discovered evidence.

A reference to the Record (page 119) shows that upon the rendition of judgment by the Court of First Instance, the defendant gave notice of his intention to perfect the bill of exceptions, and on the same day filed his motion for a new trial; and at page 127 it appears that this motion was heard and overruled, and thereupon he presented his bill of exceptions and at the same time the plaintiffs were granted leave to file their amendments to said proposed bill of exceptions.

The basis, therefore, of the error alleged by counsel for plaintiffs in error does not seem to exist in fact, and again it is suggested that this court would not, after the action of the Philippine court upon a matter of local practice, review its action.

Did F. Stuart Jones, the agent of Eleanor Erica Strong, one of the plaintiffs in error, have the power or authority on the tenth day of October, 1903, to sell the eight hundred shares of the capital stock of the Philippine Sugar Estates Development Company, Limited, involved in these proceedings?

Mrs. Strong, in her testimony, says that she was the owner of the stock, but that it was in the possession of her agent, Mr. Jones, who was looking after her affairs, and that he had been looking after her affairs for about three years; that she had given him no authority regarding these shares; that she had signed a paper written in Spanish, but did not know what it said, and did not know whether it was signed before a notary public; she does not think she ever signed but one paper, and could not fix the day or the month when that paper was signed. Mr. Woods, the partner of Mr. Jones, who did not reside in the Philippine Islands, told her not to part with the shares until she got their face value, and she told Mr. Jones not to part with them until they brought their face value. She did not know the stock was sold until she was told at her house by Mr. Jones, but could not fix the date of that conversation.

On cross-examination she admitted that she was conversant with the Spanish language, but explained that she "did not understand legal documents or business matters;" she did not know that Mr. Jones had disposed of other stock for her, but finally under pressure admitted (Rec., p. 17) that Mr. Jones had sold other stock for her during the three years that he held the stock in controversy.

Mr. Jones (Rec., p. 26) says that Mrs. Strong did not instruct him to make no sale of this stock for less than its par value, and that during all the time he held the stock he regarded himself absolutely free to sell it for Mrs. Strong on the most advantageous terms.

Mr. Strong states that he was approached by a Mr. Sloan; that Mr. Sloan wrote a letter asking if Mrs. Strong cared to sell her Friar Lands stock (Rec., p. 6); that he replied to that letter, saying that as there was no offer of price he would like to know about that, and also told him to consult with Mr. Jones, in whose possession the stock was. The date of this communication could not be fixed, nor could he find Sloan's letter or did he keep any copy of his letter to Mr. Sloan. He mentioned the fact to Mrs. Strong; he told Jones that he had received the letter from Sloan about the purchase of the stock, and told Mr. Jones that Mr. Sloan would probably talk the matter over with him; subsequently Mr. Jones came to his house one evening, and that he (Strong) stated that the Government is going to purchase the Friar Land shares. Mr. Jones replied, "What of it?" He said, "My wife should realize a good deal on those shares." Jones hesitated a moment and said, "Your wife has not any shares; I have sold them." When asked what action, if any, did he take after receiving this information from Mr. Jones, he said he talked the matter over with his wife, and both agreed that it was a very unfortunate happening, and after a day or two he wrote to Jones for information. On page 9 he says that "I saw that Mr. Jones was very sensitive about the matter, and being an old friend it was a long time before we took any steps."

Mr. Jones had this stock in his possession and believed that he had the power to sell it without reference to Mrs. Strong; described the negotiations for the sale between himself and Mr. Sloan; knew of the pending negotiations for the purchase of the Friar lands; was himself a director in the Philippine Sugar Estates Development Company, Limited; believed that the price agreed upon was at the time a fair price (Rec., p. 25); that these shares had lain for a number of years, during which nothing had been done; that he had heard of a great many negotiations and talk of the sale of the lands, and that nothing had happened, and that his idea was to realize for cash and put it into something that would give a dividend. He knew that the corporations (the owners of these lands) were demanding a great deal more money than the Government had said it would pay for the lands, and that was one reason why at the time he sold. Using his own words, "Their demands were so exorbitant that I thought it would be still a long time before anything definite was done, and that these shares would lie idle for two or three years or over." Mrs. Strong never gave him authority for each individual transaction, but that he acted for her in all of her business affairs, making sales of stock; that he received the proceeds of sale and invested them a few days afterwards in the stock of the Chartered Bank of India, and he thought he had the same power to invest her money as to make sale of her property. He told Mrs. Strong about the sale about the first of December; that when he told her they said nothing, but looked disappointed; that he took no steps to recover the stock, but did take steps to see whether he could get more money. This was on or about the 22d day of December.

From the plaintiff's own conduct regarding this stock and Jones' control and action in the premises, and his absolute agency and direction over her affairs, it might be argued with force that no specific power of attorney was needed, but that the general power given to, and exercised by, Jones

over her entire property, the placing of this stock, which passed by delivery, in his hands to be managed as he did manage her other properties, and the ratification of his many acts of agency was a sufficient authority and warrant for such sale.

But if this conclusion, from the testimony, is erroneous, the attention of the court is directed to the power of attorney (Rec., p. 152), which, when taken with the conduct of Jones regarding the properties of the plaintiff in error and of her acts of ratification, shows unquestionably that Jones had ample power to make the sale of the eight hundred shares of stock in controversy.

The objection raised by plaintiffs in error to this power of attorney, especially because it does not specify the eight hundred shares of stock in the Philippine Sugar Estates Development Company, Limited, but does specify the stocks in the Manila Trading Company and the Orient Hotel Company, is sufficiently met in the opinion of Judge Tracey (Rec., p. 197).

B.

Was the sale of the stock in question procured by fraud or deceit on the part of the defendant?

In its first decision (Rec., p. 131) the Supreme Court of the Philippine Islands held that there was no fraud or deception on the part of the defendant which would impair or vitiate the sale of the complainant's stock, and the opinion of Judge Tracey, reviewing the facts and the law, is particularly referred to as containing not only a fair statement of fact and a comprehensive review of decisions, but as indicating the correct rule to be applied in this case.

The purchase of this stock was initiated by a well-known broker by the name of Sloan, of Manila, acting for one Kaufman, who had been commissioned by the defendant to purchase shares in the Philippine Sugar Estates Develop-

ment Company, Limited. Sloan first wrote to Mr. Strong, the husband of the owner of the stock, and was by Mr. Strong referred to Mrs. Strong's agent, Jones, who held the stock.

The testimony of Mr. Strong regarding this transaction appears on pages 6 and 7 of the record; the testimony of Mr. Jones will be found on pages 21, 22, 24, 26, 27, and 28 of the record; the testimony of Sloan on pages 45, 46, and 47 of the record, and of the defendant on pages 54 and 55 of the record.

There is no allegation of any misstatement or fraudulent representation by the defendant, either directly or through his agents, but, as stated by the court below, "the machinations with which the defendant is charged consist in the suppression of his identity while negotiating for the stock and when paying for it, and also of his intention as majority stockholder in the company to close the negotiation then pending with the Government for the sale of the Friar lands owned by the company" (Rec., p. 135).

It will be borne in mind that the negotiations for the sale of the Friar lands to the Government had been pending for months prior to this sale; that the American Commissioners having charge of the matter were, and had been for months, in Manila; that these negotiations had been interrupted, and at one time temporarily terminated by reason of the failure on the part of the contracting parties to get together as to price; that the price insisted upon by the owning companies of these lands, and especially by the Philippine Sugar Estates Development Company, Limited, was considered exorbitant; that all of these matters were freely and fully discussed in the newspapers at Manila; that the relation of the defendant to the Philippine Sugar Estates Development Company, and his large holding therein, were well known to Jones, the agent of the Strongs, and well known in the community generally; that Jones himself was a stockholder and a director in this company, and it is testified to by the defend-

ant, and that testimony is not overcome, that at the time that the negotiations for the purchase of this stock were set on foot, and up to and after the time of the acquisition of said purchase, the negotiators for the sale of these lands were far apart; that it was a matter of grave doubt whether a satisfactory conclusion would be reached, but that Mr. Jones himself thought that it was best to sell this stock at the price he placed upon it rather than to run the risks of the failure of negotiations for the sale of this land; neither the plaintiffs in error nor their agent, Jones, made any application to the defendant or to the board of directors for information as to the status of pending negotiations; that the defendant (Rec., p. 59) rejected the offer made by the Government on July 5, and that his rejection was made known to the directors, and that it was not until December 21 that he was authorized to sign a contract for the sale to the Government.

At the time, therefore, that this stock was sold, in October, and during the pendency of the negotiations for its purchase, no disclosure could have been made by the defendant which was not known to the agent of the plaintiffs in error, and there was, therefore, no concealment of material facts affecting the value of this stock, because everything was in doubt regarding the sale of lands.

And these facts and conditions should be borne in mind in determining whether there was any wrong-doing or deceit on the part of the defendant in purchasing stock not in the company's treasury, but in the hands of a stockholder, without disclosing his identity.

To us it would seem that under the facts of this case the decisions of the courts of several of the States, some of them referred to in Judge Tracey's opinion, holding the extreme rule that a director and stockholder must disclose his intention to another stockholder before buying stock from him, have no application, even if that rule was the correct rule under the authorities controlling the question in this coun-

try; but it is submitted that such a rule is not supported by the current of American authority.

Hooker *vs.* Midland Steel Company *et al.,* 117 Ill. App., 441.

Haarstick *vs.* Fox, 9 Utah, 110.

Walsh *vs.* Goulden, 130 Mich., 531.

In the last case quoted it was held:

> "Directors, of course, stand in a fiduciary relation to the corporation itself. They do not stand in that relation, however, when dealing with other stockholders for the purchase or sale of stock. In the purchase and sale of stock between stockholders there must be some actual misrepresentation in order to constitute fraud. Mere silence is not sufficient."
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> Krumbhaar *vs.* Griffiths, 151 Pa., 223.
>
> Bloom *vs.* Loan Company *et al.,* 152 N. Y., 114.
>
> O'Neil *vs.* Ternes, 32 Wash., 528.

Of similar tenor are many authorities collected by Cook in his work on Corporations (4th Edition, 1898), sec. 320, page 622, and the rule stated by him is

> "A director of the corporation itself may buy and sell its stock like any other individual. The information which he has of the affairs of the corporation, whereby he is enabled to buy or sell at an advantage over the person with whom he deals, does not affect the validity of the transaction. He is entitled to the benefit of his facilities for information. There is no confidential relation between him and a stockholder, so far as a sale of the stock between them is concerned; and, so long as he remains silent and does not actively mislead the person with whom he deals, the transaction can not be set aside for fraud."

And in this he is supported by Taylor on Private Corporations, (5th Ed.) sec. 698, and other text writers generally.

Beach on Private Corporations, sec. 614 and 246.

The principles of civil jurisprudence applicable to this case are fully stated and discussed in the opinion of the Supreme Court of the Philippine Islands (Rec., pp. 136 and 137).

It is respectfully submitted that the judgment of the court below should be affirmed.

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STRONG *v.* REPIDE.

ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 110. Argued March 10, 11, 1909.—Decided May 3, 1909.

Although there is no technical finding of facts by the court of first instance of the Philippine Islands, if the opinion shows the facts on which the judgment is based and the courts below differ in regard thereto they may be reviewed by this court under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 691. *De la Rama* v. *De la Rama*, 201 U. S. 303.

Where a sale made through an agent of the vendor has been effected by the fraud and deceit of the vendee, the sale cannot stand whether or not the vendor's agent had power to sell.

A director upon whose action the value of the shares depends cannot avail of his knowledge of what his own action will be to acquire shares from those whom he intentionally keeps in ignorance of his expected action and the resulting value of the shares.

This is a rule of common law, and also of the Spanish law before the adoption of the Philippine Civil Code; and, under §§ 1261–1269 of that code, a contract obtained under such circumstances can be avoided by the party whose consent would not have been given had he known the facts within the knowledge of the other party.

Even though a director may not be under the obligation of a fiduciary nature to disclose to a shareholder his knowledge affecting the value of the shares, that duty may exist in special cases, and did exist upon the facts in this case.

In this case the facts clearly indicate that a director of a corporation owning friar lands in the Philippine Islands, and who controlled the action of the corporation, had so concealed his exclusive knowledge of the impending sale to the Government from a shareholder from whom he purchased, through an agent, shares in the corporation, that the concealment was in violation of his duty as a director to disclose such knowledge and amounted to deceit sufficient to avoid the sale; and, under such circumstances, it was immaterial whether the shareholder's agent did or did not have power to sell the stock.

While the method of payment cannot have induced the vendor's consent to a sale, where that method tended to conceal the identity of the purchaser and was part of a scheme to conceal facts, the knowledge of which would have resulted in vendor's refusal to sell, evidence as to the payment is admissible to show the fraudulent intent and scheme of the purchaser.

The expressed prohibitions in § 1459 of the Spanish Civil Code against directors of corporations acquiring shares of stock entrusted to them do not apply to purchases from others.

An expressed prohibition against directors acquiring shares held by themselves in a fiduciary capacity does not refer to purchases by directors of shares from others, or so limit the prohibitions against purchases of stock by directors that a sale to one cannot be avoided by his deceit in not disclosing material facts within his exclusive knowledge.

Although there may be objections to the form of judgment in the Court

of First Instance as they are not of a material nature this court will follow the same course.

6 Philippine, 680, reversed.

THIS action was commenced on the twelfth day of January, 1904, in the Court of First Instance of the city of Manila, Philippine Islands, by the plaintiffs in error, Eleanor Erica Strong and Richard P. Strong, her husband, against the defendant in error. It was brought by the plaintiff, Mrs. Strong, as the owner of eight hundred shares of the capital stock of the Philippine Sugar Estates Development Company, Limited, (the other plaintiff being added as her husband), to recover such shares from defendant (who was already the owner of 30,400 of the 42,030 shares issued by the company), on the ground that the shares had been sold and delivered by plaintiff's agent to the agent of defendant, without authority from plaintiff; and also on the ground that defendant fraudulently concealed from plaintiff's agent, one F. Stuart Jones, facts affecting the value of the stock so sold and delivered. The stock was of the par value of $100 per share, Mexican currency.

The plaintiff never had any negotiations for the sale of the stock herself; and was ignorant that it was sold until some time after the sale, the negotiations for which took place between an agent of the plaintiff and an agent of defendant, the name of the defendant being undisclosed.

In addition to his ownership of almost three-fourths of the shares of the stock of the company, the defendant was one of the five directors of the company, and was elected by the board the agent and administrator general of such company, "with exclusive intervention in the management" of its general business.

The defendant put in issue the lack of authority of the agent of the plaintiff, denied all fraud, and alleged that the purchase of the stock from plaintiff's agent (which stock was payable to bearer and transferable by delivery) was made by one Albert Kauffman, who afterwards sold and conveyed the same to the

defendant, and that the defendant, prior to the commencement of the suit and prior to any demand made upon him by the plaintiff in error herein, had sold, transferred and delivered the stock to Luis Gutierrez, a citizen and resident of Spain. (He was a brother of the defendant.)

In April, 1904, the case came on for trial in the Court of First Instance, which, on the twenty-ninth of that month, duly decided it and stated certain facts in the cause upon which it based its opinion and judgment, among which were the facts that the agent of the plaintiff had no authority to sell or transfer the shares of stock in question, and also that the transaction resulting in the delivery of the stock to the agent of the defendant was fraudulent, because the defendant concealed from the plaintiff's agent facts affecting the value of the stock, which the defendant was in good faith bound to reveal, by reason of which the sale of the stock to defendant was made for the total sum of $16,000, Mexican currency, while within two months and a half the shares were worth $76,256, United States currency. Upon the findings the court directed that the plaintiff recover from the defendant the sum found to be due by the court, which (after deducting the $16,000, Mexican currency) amounted to $138,352.71, Philippine currency, and the costs of suit, and it was ordered that the judgment might be satisfied by the delivery to the plaintiff, Mrs. Strong, of her eight hundred shares of stock within the time mentioned in the decree, in which event the plaintiff was to pay the defendant $16,000, Mexican currency, or its equivalent in Philippine currency. Other particulars were stated in the decree.

On May 3, 1904, a motion was made by defendant for a new trial, which, on May 9, 1904, was overruled.

A bill of exceptions was then made and appeal filed. Subsequently, and on January 18, 1906, the same was duly argued in the Supreme Court of the Philippine Islands, and on April 28, 1906, a decision was rendered by the court, holding that the agent of the plaintiff had no power to sell or deliver her stock, and it affirmed the decree of the Court of First Instance

on that ground, but not on the second ground taken by that court, that the sale of the stock through the plaintiff's agent had been procured by fraud on the part of the defendant.

Subsequently to the affirmance of the judgment the defendant, through his counsel, made a motion for a new trial on the ground of newly-discovered evidence, which consisted of a power of attorney (that had been mislaid and after the trial had been found) from Mrs. Strong to Mr. F. Stuart Jones and Mr. Robert H. Wood, which authorized both, or either of them, to sell or otherwise dispose of the property of the plaintiff as they or he might choose. After opposition this motion was granted and leave given to the parties to submit new evidence as to the nature of the authority delegated by the plaintiff in error to her agent Jones, and under that permission the newly-discovered power of attorney was put in evidence. Upon that piece of evidence the court held that the authority of the agent Jones was sufficient and that the paper became absolutely decisive of the issues in the case, and the order affirming the judgment of the court below was therefore set aside, the judgment of the Court of First Instance reversed and the action dismissed upon its merits. From that decree of reversal and dismissal the plaintiffs seek to bring the case here for review, and have sued out a writ of error and taken an appeal.

The facts out of which the controversy arises are in substance these:

In 1902 it was thought important for the Government of the United States to secure title, if reasonably possible, to what were called the friar lands in the Philippine Islands. To that end various inquiries were made on the part of the Government from time to time as to the possibility of obtaining title to all those lands and what would be the probable expense. The lands were not owned by the same people, but were divided among different and separate owners. The Philippine Sugar Estates Development Company, Limited, owned of these lands what are more particularly described as the Dominican lands,

and they were regarded as nearly one-half the value of all the friar lands.

On July 5, 1903, the governor of the Philippine Islands, on behalf of the Philippine Government, made an offer of purchase for the total sum of $6,043,219.47 in gold for all the friar lands, though owned by different owners. This offer, so far as concerned that portion of the lands owned by defendant's company, was rejected by defendant in his capacity as majority shareholder, without any consultation with the other shareholders. The representatives of all the different owners of all the lands, including defendant's company, in answer to the above offer, then fixed their selling price at $13,700,000 for all of such lands. During the negotiations consequent upon these different offers, which lasted for some time after the first offer was made, an offer was finally, and towards the end of October, 1903 made by the governor of $7,535,000. All the owners of all these friar lands, with the exception of the defendant who represented his company, were willing and anxious to accept this offer and to convey the lands to the Government at that price. He alone held out for a better offer while all the other owners were endeavoring to persuade him to accept the offer of the Government. The defendant continued his refusal to accept until the other owners consented to pay to his company $335,000 of the purchase price for their land and until the Government consented that a thousand hectares should be excluded from the sale to it of the land of defendant's company. This being agreed to the contract for the sale was finally signed by the defendant as attorney in fact for his company, December 21, 1903. The defendant, of course, as the negotiations progressed knew that the decision of the question lay with him, and that if he should decide to accept the last offer of the Government his decision would be the decision of his company, as he owned three-fourths of its shares, and the negotiations would then go through as all the owners of the balance of the land desired it. If the sale should not be consummated and things should remain as they were, the defendant also knew that the

value of the lands and of the shares in the company would be almost nothing. He himself says, in speaking of these lands owned by his company, that had the Government "given the haciendas the protection which they ought to have received they would have been worth $6,000,000 gold; but, considering the abnormal condition in which they were on account of the failure of the Government to protect these haciendas, it is impossible to fix any value; they were worth nothing; they were a charge." Also, the company had paid no dividends, and only lived on its credit, and could not even pay taxes. The company had no other property of any substantial value than these lands. They were its one valuable asset.

While this state of things existed, and before the final offer had been made by the governor, the defendant, although still holding out for a higher price for the lands, took steps, about the middle or latter part of September, 1903, to purchase the 800 shares of stock in his company owned by Mrs. Strong, which he knew were in the possession of F. Stuart Jones, as her agent. The defendant, having decided to obtain these shares, instead of seeing Jones, who had an office next door, employed one Kauffman, a connection of his by marriage, and Kauffman employed a Mr. Sloan, a broker, who had an office some distance away, to purchase the stock for him, and told Sloan that the stock was for a member of his wife's family. Sloan communicated with the husband of Mrs. Strong and asked if she desired to sell her stock. The husband referred him to Mr. Jones for consultation, who had the stock in his possession. Sloan did not know who wanted to buy the shares, nor did Jones when he was spoken to. Jones would not have sold at the price he did had he known it was the defendant who was purchasing, because, as he said, it would show increased value, as the defendant would not be likely to purchase more stock unless the price was going up. As the articles of incorporation, by subdivision twenty, required a resolution of the general meeting of stockholders for the purpose of selling more than one hacienda, and as no such general meeting had been called at

the time of the sale of the stock, Mr. Jones might well have supposed there was no immediate prospect of a sale of the lands being made, while at the same time defendant had knowledge of the probabilities thereof, which he had acquired by his conduct of the negotiations for their sale, as agent of all the shareholders, and while acting specially for them and himself.

The result of the negotiations was that Jones, on or about October 10, 1903, assuming that he had the power, and without consulting Mrs. Strong, sold the 800 shares of stock for $16,000, Mexican currency, delivering the stock to Kauffman in Sloan's office, who paid for it with the check of Rueda Hermanos for $18,000, the surplus $2,000 being arranged for, and Kauffman being paid $1,800 by defendant for his services. The defendant thus obtained the 800 shares for about one-tenth of the amount they became worth by the sale of the lands between two and three months thereafter. In all the negotiations in regard to the purchase of the stock from Mrs. Strong, through her agent Jones, not one word of the facts affecting the value of this stock was made known to plaintiff's agent by defendant but, on the contrary, perfect silence was kept. The real state of the negotiations with the Government was not mentioned, nor was the fact stated that it rested chiefly with the defendant to complete the sale. The probable value of the shares in the very near future was thus unknown to any one but defendant, while the agent of the plaintiff had no knowledge or suspicion that defendant was the one seeking to purchase the shares. The agent sold because, as he testified, he wanted to invest the money in some kind of property that would pay dividends, and he was expecting nothing from this company, as negotiations for the sale of the lands had gone on so long, and there appeared no prospect of any sale being made, at any rate not for a very long time.

It is undeniable that during all this time the subject of the sale of the friar lands was frequently mooted and its probabilities publicly discussed in a general way. Such discussion was founded upon rumors and gossip as to the condition of the

negotiations. The public press referred to it not infrequently, but the actual state of the negotiations, the actual probabilities of the sale being consummated, and the particular position of power and influence which the defendant occupied in such negotiations, prior to the time of the purchase of plaintiff's stock, were not accurately known by plaintiff's agent or by anyone else outside those interested in the matter as negotiators.

Mr. Henry E. Davis for plaintiffs in error and appellants:

Upon all the evidence in the case, even including the power of attorney, the defendant was guilty of the fraud alleged. "Consent given by error, under violence, by intimidation, or deceit shall be void." Civil Code, Art. 1265. "There is deceit when by words or insidious machinations on the part of one of the contracting parties, the other is induced to execute a contract which, without them, he would not have made." Civil Code, Art. 1269. See also Manresa, vol. 8, p. 623. And as to the principles governing this case, *Oliver* v. *Oliver*, 118 Georgia, 362; *Stewart* v. *Harris*, 69 Kansas, 498; *Miner* v. *Belle Isle Co.*, 93 Michigan, 97; *Ervin* v. *Oregon &c. Co.*, 27 Fed. Rep. 625, 631; *Wheeler* v. *Abilene &c. Co.*, 159 Fed. Rep. 391; *Sidell* v. *Mo. Pac. Ry.*, 78 Fed. Rep. 424; *Ritchie* v. *McMullen*, 79 Fed. Rep. 522; *Farmers' Loan & Trust Co.* v. *New York Co.*, 150 N. Y. 410; *Hunter* v. *Hunter*, 50 Missouri, 229; *Stone* v. *Moody*, 84 Pac. Rep. 617; 1 Bigelow on Fraud, pp. 231, 297, 312; Domat's Civil Law, vol. 1, p. 574, No. 1457; *Id.*, p. 584, No. 1490; *Id.*, p. 510, No. 1259; *Id.*, No. 1260; *Id.*, p. 511, No. 1262; Escriche, Fraude.

Mr. George E. Hamilton, with whom *Mr. John W. Yerkes*, *Mr. M. J. Colbert* and *Mr. John J. Hamilton* were on the brief, for defendant in error:

Under the facts of this case the decisions of the courts of several of the States, holding that a director and stockholder must disclose his intention to another stockholder before buying stock from him, have no application, even if that rule was the

correct rule under the authorities controlling the question in this country; but that rule is not supported by the current of American authority. *Hooker* v. *Midland Steel Co.*, 117 Ill. App. 441; *Haarstick* v. *Fox*, 9 Utah, 110.

While directors stand in a fiduciary relation to the corporation itself, they do not stand in that relation when dealing with other stockholders for the purchase or sale of stock. In the purchase and sale of stock between stockholders there must be some actual misrepresentation in order to constitute fraud. Mere silence is not sufficient. *Walsh* v. *Goulden*, 130 Michigan, 531. See also *Krumbhaar* v. *Griffiths*, 151 Pa. St. 223; *Bloom* v. *Loan Company*, 152 N. Y. 114; *O'Neil* v. *Ternes*, 32 Washington, 528.

A director of the corporation itself may buy and sell its stock like any other individual. He is entitled to the benefit of his facilities for information. No confidential relation exists between him and a stockholder, as to sales of the stock; and, so long as he remains silent and does not actively mislead the person with whom he deals, the transaction can not be set aside for fraud. See Cook on Corporations, 4th ed., 1898, § 320, p. 622; and Taylor on Corp., 5th ed., § 698; Beach on Corp., §§ 246, 614.

Mr. Justice Peckham, after making the foregoing statement, delivered the opinion of the court.

The Court of First Instance at Manila gave judgment in favor of the plaintiffs on two grounds discussed in the opinion, one ground being that the agent of plaintiff, by whom the sale was concluded, had no authority to make it, and hence the delivery of the stock by him to defendant's agent was illegal; the other ground was that the defendant had been guilty of fraud in concealing certain facts from the seller affecting the value of the stock at the time when its sale was concluded.

Upon appeal to the Supreme Court of the islands the judgment was affirmed by a divided court, upon the ground of the

lack of authority of the plaintiff's agent to make the sale, but not upon the ground of the alleged fraud on the part of the defendant. Two of the judges dissented, on the ground that there was authority to make the sale, although they agreed with the majority that there was no fraud.

One of the majority held not only that there was no authority to sell, but that there was fraud, and therefore only concurred in the result in affirming the judgment for the plaintiff.

When the motion for a new trial was subsequently granted on account of newly-discovered evidence the majority of the court, on the authority of the second power of attorney (which was the newly-discovered evidence then received), held that it was sufficient to authorize the plaintiff's agent to make the sale he did in her behalf, and as the majority held there was no fraud in the case, the judgment for plaintiff was reversed and the complaint was dismissed.

Mr. Justice Johnson dissented, and filed a dissenting opinion in favor of the affirmance of the judgment of the Court of First Instance on both the grounds taken by it.

We are now called upon to review the judgment of the Supreme Court dismissing the complaint of the plaintiff. If the purchase of the stock by the defendant was obtained by reason of his fraud or deceit, it is not material to inquire whether the agent of the plaintiff had power to sell the stock. If fraud or deceit existed, the sale cannot stand. We shall therefore determine the question whether or not there was evidence of such fraud or deceit as would avoid the sale.

Although there is no technical finding of facts by the Court of First Instance, yet in its opinion that court does state facts upon which it bases its judgment, and which may be referred to for the purpose of determining what the facts are. On appeal or writ of error from the judgment of the Supreme Court of the Philippine Islands the facts (when the courts below differ) will be reviewed by this court under the tenth section of the act of July 1, 1902, c. 1369, 32 Stat. 691. *De la Rama* v. *De la Rama*, 201 U. S. 303, 309.

A careful perusal of the evidence brings us to the conclusion that it was ample to sustain the judgment of the Court of First Instance, considered with reference to the law applicable to the Philippine Islands.

The Civil Code of that jurisdiction after providing by article 1261 for the requisites of a contract, among which is the "consent of the contracting parties," says in article 1265 as follows: "Consent given by error, under violence, by intimidation, or deceit, shall be void." Articles 1266 to 1268, inclusive, explain the meaning of the words as used in article 1265, and describe what may be error, under violence or by intimidation. It is then provided by article 1269 that "There is deceit when by words or insidious machinations on the part of one of the contracting parties the other is induced to execute a contract which without them he would not have made." The meaning of the words "insidious machinations" may be said to be a deceitful scheme or plot with an evil design, or, in other words, with a fraudulent purpose. Thus, the deceit which avoids the contract need not be by means of misrepresentations in words. It exists where the party who obtains the consent does so by means of concealing or omitting to state material facts, with intent to deceive, by reason of which omission or concealment the other party was induced to give a consent which he would not otherwise have given. Article 1269. This is the rule of the common law also, but in both cases it is based upon the proposition that, under all the circumstances of the case, it was the duty of the party who obtained the consent, acting in good faith, to have disclosed the facts which he concealed. *Stewart* v. *Wyoming Cattle Ranch Co.*, 128 U. S. 383, 388. This was the Spanish law before the adoption of the code. Partidas 5, Titulo 5, Ley 57; Partidas 7, Titulo 16, Ley 1. See also Scaevola, Codigo Civil, Articles 1269, 1270. In such cases concealment is equivalent to misrepresentation.

The question in this case, therefore, is whether, under the circumstances above set forth, it was the duty of the defendant, acting in good faith, to disclose to the agent of the plaintiff

the facts bearing upon or which might affect the value of the stock.

If it were conceded, for the purpose of the argument, that the ordinary relations between directors and shareholders in a business corporation are not of such a fiduciary nature as to make it the duty of a director to disclose to a shareholder the general knowledge which he may possess regarding the value of the shares of the company before he purchases any from a shareholder, yet there are cases where, by reason of the special facts, such duty exists. The supreme courts of Kansas and of Georgia have held the relationship existed in the cases before those courts because of the special facts which took them out of the general rule, and that under those facts the director could not purchase from the shareholder his shares without informing him of the facts which affected their value. *Stewart* v. *Harris*, 69 Kansas, 498; *S. C.*, 77 Pac. Rep. 277; *Oliver* v. *Oliver*, 118 Georgia, 362; *S. C.*, 45 S. E. Rep. 232. The case before us is of the same general character. On the other hand, there is the case of *Board of Commissioners* v. *Reynolds*, 44 Indiana, 509–515, where it was held (after referring to cases) that no relationship of a fiduciary nature exists between a director and a shareholder in a business corporation. Other cases are cited to that effect by counsel for defendant in error. These cases involved only the bare relationship between director and shareholder. It is here sought to make defendant responsible for his actions, not alone and simply in his character as a director, but because, in consideration of all the existing circumstances above detailed, it became the duty of the defendant, acting in good faith, to state the facts before making the purchase. That the defendant was a director of the corporation is but one of the facts upon which the liability is asserted, the existence of all the others in addition making such a combination as rendered it the plain duty of the defendant to speak. He was not only a director, but he owned three-fourths of the shares of its stock, and was, at the time of the purchase of the stock, administrator general of the company, with large

powers, and engaged in the negotiations which finally led to the sale of the company's lands (together with all the other friar lands) to the Government at a price which very greatly enhanced the value of the stock. He was the chief negotiator for the sale of all the lands, and was acting substantially as the agent of the shareholders of his company by reason of his ownership of the shares of stock in the corporation and by the acquiescence of all the other shareholders, and the negotiations were for the sale of the whole of the property of the company. By reason of such ownership and agency, and his participation as such owner and agent in the negotiations then going on, no one knew as well as he the exact condition of such negotiations. No one knew as well as he the probability of the sale of the lands to the Government. No one knew as well as he the probable price that might be obtained on such sale. The lands were the only valuable asset owned by the company. Under these circumstances and before the negotiations for the sale were completed the defendant employs an agent to purchase the stock, and conceals from the plaintiff's agent his own identity and his knowledge of the state of the negotiations and their probable result, with which he was familiar as the agent of the shareholders and much of which knowledge he obtained while acting as such agent and by reason thereof. The inference is inevitable that at this time he had concluded to press the negotiations for a sale of the lands to a successful conclusion, else why would he desire to purchase more shares which, if no sale went through, were, in his opinion, worthless, because of the failure of the Government to properly protect the lands in the hands of their then owners? The agent of the plaintiff was ignorant in regard to the state of the negotiations for the sale of the land, which negotiations and their probable result were a most material fact affecting the value of the shares of stock of the company, and he would not have sold them at the price he did had he known the actual state of the negotiations as to the lands and that it was the defendant who was seeking to purchase the stock. Concealing his identity when

procuring the purchase of the stock, by his agent, was in itself strong evidence of fraud on the part of the defendant. Why did he not ask Jones, who occupied an adjoining office, if he would sell? But by concealing his identity he could by such means the more easily avoid any questions relative to the negotiations for the sale of the lands and their probable result, and could also avoid any actual misrepresentations on that subject, which he evidently thought were necessary in his case to constitute a fraud. He kept up the concealment as long as he could, by giving the check of a third person for the purchase money. Evidence that he did so was objected to on the ground that it could not possibly even tend to prove that the prior consent to sell had been procured by the subsequent check given in payment. That was not its purpose. Of course, the giving of the check could not have induced the prior consent, but it was proper evidence as tending to show that the concealment of identity was not a mere inadvertent omission, an omission without any fraudulent or deceitful intent, but was a studied and intentional omission to be characterized as part of the deceitful machinations to obtain the purchase without giving any information whatever as to the state and probable result of the negotiations, to the vendor of the stock, and to in that way obtain the same at a lower price. After the purchase of the stock he continued his negotiations for the sale of the lands, and finally, he says, as administrator general of the company, under the special authority of the shareholders, and as attorney in fact he entered into the contract of sale December 21, 1903. The whole transaction gives conclusive evidence of the overwhelming influence defendant had in the course of the negotiations as owner of a majority of the stock and as agent for the other owners, and it is clear that the final consummation was in his hands at all times. If under all these facts he purchased the stock from the plaintiff, the law would indeed be impotent if the sale could not be set aside or the defendant cast in damages for his fraud.

The Supreme Court of the islands, in holding that there was

no fraud in the purchase, said that the responsibility of the directors of a corporation to the individual stockholders did not extend beyond the corporate property actually under the control of the directors; that they did not owe any duty to the members in respect to their individual stock, which would prevent them from purchasing the same in the usual manner. While this may in general be true, we think it is not an accurate statement of the case, regard being had to the facts above mentioned.

It is said that by the code of commerce of the Philippine Islands the directors are declared to be mandatories of the society, and that by article 1459 of the Spanish Civil Code they are prohibited from acquiring by purchase, even at public or judicial auction, the property the administration or sale of which may have been entrusted to them, and that this is the extent of the prohibition. This provision has no reference to the purchase for himself, under such facts as existed here, by an officer of a corporation, of stock in the corporation owned by another. The case before us seems a plain one for holding that, under the circumstances detailed, there was a legal obligation on the part of the defendant to make these disclosures.

It is further objected, however, that the plaintiff, Mrs. Strong, denied that she had ever authorized her agent to sell this stock, and therefore by her own evidence there had never been any consent by her, obtained by fraud or otherwise, because there had never been any consent at all. There is nothing in this objection. Mrs. Strong contended that such authority as she had given never authorized her agent to sell this stock. That had nothing to do with the obligation of the defendant to make the disclosure of the facts already adverted to before the purchase of the stock from plaintiff's agent, and if, by reason of such failure, the defendant was guilty of a fraud in procuring the purchase from the plaintiff's agent it was a fraud, for which he became liable to the plaintiff, even though the plaintiff maintained that her agent was not authorized to sell. The court held that he was authorized, and therefore if he sold by

reason of the fraud committed by defendant the plaintiff was thereby injured and the defendant became liable. In legal effect her consent was obtained by the fraud.

We have not overlooked the objections made in regard to the form of the judgment in the Court of First Instance, but are of opinion that such objections are not of a material nature, and we are disposed to follow the course pursued by that court in this case.

Other objections made by the defendant's counsel we have examined, but do not regard them as important. We therefore reverse the judgment of the Supreme Court, dismissing the complaint, and affirm that of the Court of First Instance, and

It is so ordered.